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Monday
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–137–AD; Amendment 39–11292; AD 99–19–03]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Sabreliner Model NA–265–40, NA–265–60, NA–70, and NA–265–80 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Tina Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Sabreliner Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38358). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). Those 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F–27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling

characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½-to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream

Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition.

However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that,

although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary

greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

There are approximately 283 Model NA–265–40, NA–265–60, NA–70, and, NA–265–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,560, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–03 Sabreliner Corporation: Amendment 39–11292. Docket 99–NM–137–AD.

Applicability: Model NA–265–40, NA–265–60, NA–70, and NA–265–80 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30131 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–140–AD; Amendment 39–11295; AD 99–19–06]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Mitsubishi Model YS–11 and YS–11A series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

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

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Mitsubishi Model YS–11 and YS–11A series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38371). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are

observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any

deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series

airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal for Airplanes With ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation

Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision

may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [part 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the

ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,280, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–06 Mitsubishi Heavy Industries, Ltd.: Amendment 39–11295. Docket 99–NM–140–AD.

Applicability: Model YS–11 and YS–11A series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

"• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions."

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30132 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–141–AD; Amendment 39–11296; AD 99–19–07]

RIN 2120–AA64

Airworthiness Directives; Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, 1601 Meacham Boulevard, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Efran Esparza, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate, 1601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5130; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38355). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). Those 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374

Manufacturer airplane model	Number	Federal Register citation
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F–27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, *i.e.*, visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when to inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions

typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing.

According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½ to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to

trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and

landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [part 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of-attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.*, ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and

oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

There are approximately Model G–73 (Mallard) and G–73T series airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $300, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–07 Gulfstream American (Frakes Aviation): Amendment 39–11296. Docket 99–NM–141–AD.

Applicability: Model G–73 (Mallard) and G–73T series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

- Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.
- Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Airplane Certification Office, ASW–150 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office, ASW–150 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30133 Filed 11–19–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–142–AD; Amendment 39–11297; AD 99–19–08]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–14 and L–18 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–14 and L–18 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model L–14 and L–18 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38338). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). Those 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F–27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific

consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers

conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily address the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy

inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated

only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [part 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master

Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of-attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any

AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

There are approximately 120 Model L–14 and L–18 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,540, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–08 Lockheed: Amendment 39–11297. Docket 99–NM–142–AD.

Applicability: Model L–14 and L–18 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30134 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–143–AD; Amendment 39–11298; AD 99–19–09]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model F–27 and FH–227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fairchild Model F–27 and FH–227 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred

in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fairchild Model F–27 and FH–227 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38322). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). Those 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F–27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain

airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, *i.e.*, visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ½ or ¼ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ½ to ¼ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape

associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily address the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal for Airplanes With ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the

common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [part 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion.

No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.*, ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation

may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

There are approximately 426 Model F–27 and FH–227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–09 Maryland Air Industries, Inc.: Amendment 39–11298. Docket 99–NM–143–AD.

Applicability: Model F–27 and FH–227 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30135 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–144–AD; Amendment 39–11299; AD 99–19–10]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR–42 and ATR–72 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration

(FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR–42 and ATR–72 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38368). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer Airplane Model	Number	Federal Register Citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374.
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358.
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341.
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325.
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371.
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338.
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351.
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348.
Dornier Model 328–100	99–NM–150–AD	64 FR 38332.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329.

Comments

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

1. Support For the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and de Havilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from

ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British

Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½-to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request to Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice

accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory

materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [part 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of-attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed

by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 158 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,480, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–10 Aerospatiale: Amendment 39–11299. Docket 99–NM–144–AD.

Applicability: Model ATR–42 and ATR–72 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

• ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30136 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–145–AD; Amendment 39–11300; AD 99–19–11]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model BAe ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model BAe ATP series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model BAe ATP series airplanes was published in the **Federal Register** on July 17, 1999 (64 FR 38351). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322

Manufacturer airplane model	Number	Federal Register citation
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot.

Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised

the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily address the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to

ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM

limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the

airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed

AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–11 **British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]:** Amendment 39–11300. Docket 99–NM–145–AD.

Applicability: Model BAe ATP series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30137 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–147–AD; Amendment 39–11302; AD 99–19–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model HS 748 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model HS 748 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38319). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model Airplanes 4101	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model Series Airplanes 1329–23 and 1329–25 (Lockheed Jetstar)	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the

proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request to Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that

operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an

acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following:

Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into

known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA

consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action to Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: Maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: For some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

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

Should an affected airplane by imported and placed on the U.S. Register, it will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–13 British Aerospace Regional Aircraft (Formerly British Aerospace, Aircraft Group): Amendment 39–11302. Docket 99–NM–147–AD.

Applicability: Model HS 748 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.

• (b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30138 Filed 11–19–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–148–AD; Amendment 39–11303; AD 99–19–14]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38365). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register Citation
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American, (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–Ad	64 FR 38322
Aerospatiale Models, ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAc, ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101, Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model, HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are

observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any

deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series

airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (*i.e.*, stick shaker or stick pusher) are reset to lower values (*i.e.*, higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal for Airplanes With ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (*i.e.*, Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation

Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision

may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; *etc.* One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the

ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.*, ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request to Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,440, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–14 SAAB Aircraft AB: Amendment 39–11303. Docket 99–NM–148–AD.

Applicability: SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• "The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30139 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–149–AD; Amendment 39–11304; AD 99–19–15]

RIN 2120–AA64

Airworthiness Directives; CASA C–212 and CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA C–212 and CN–235 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA C–212 and CN–235 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38348). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register Citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374.
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358.
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341.
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325.

Manufacturer airplane model	Number	Federal Register Citation
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371.
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes.	99–NM–141–AD	64 FR 38355.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338.
Fairchild Models F–27and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351.
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329.

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, *i.e.*, visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic

operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the

electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily address the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½- to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (*i.e.*, stick

shaker or stick pusher) are reset to lower values (*i.e.*, higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal for Airplanes With ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (*i.e.*, Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and

landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition.

For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.*, ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, ''patching,'' and

oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,160, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–15 **Construcciones Aeronauticas, S.A. (CASA):** Amendment 39–11304. Docket 99–NM–149–AD.

Applicability: C–212 and CN–235 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30140 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–150–AD; Amendment 39–11305; AD 99–19–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Model Dornier 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model Dornier 328–100 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model Dornier 328–100 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38332). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374.
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358.
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341.
McDonnell Douglas Models DC–3 and DC–4	99–NM–139–AD	64 FR 38325.
Mitsubishi Heavy Industries Model YS–11 and YS–11A	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes.	99–NM–141–AD	64 FR 38355.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338.
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351.
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329.

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request to Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific

consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers

conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½-to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request to Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy

inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes With ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated

only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [part 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master

Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.,* ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any

AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,860, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–16 Dornier Luftfahrt GmbH: Amendment 39–11305. Docket 99–NM–150–AD.

Applicability: Model Dornier 328–100 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30141 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–151–AD; Amendment 39–11306; AD 99–19–17]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 1329–23 and 1329–25 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 1329–23 and 1329–25 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the

airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model 1329–23 and 1329–25 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38316). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). Those 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane Model	Number	Federal register citation
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341.
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371.
Gulfstream American, (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes.	99–NM–141–AD	64 FR 38355.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338.
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322.
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351.
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362.
Fokker Model F–27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329.

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request to Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is

that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since

they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request to Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing

boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½ to ¾ inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (*i.e.*, stick shaker or stick pusher) are reset to lower values (*i.e.*, higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼ inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (*i.e.*, Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations

on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When to Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request to Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training,

along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request to Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (e.g., ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (e.g., normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request to Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

There are approximately 91 Model 1329–23 and 1329–25 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

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

Regulatory Impact

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

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–17 Lockheed: Amendment 39–11306. Docket 99–NM–151–AD.

Applicability: Model 1329–23 and 1329–25 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30142 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–152–AD; Amendment 39–11307; AD 99–19–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 and DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–7 and DHC–8 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–7 and DHC–8 series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38362). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company, Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American, (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, *i.e.*, visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½

inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or deHavilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a

British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD.

Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresses the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½ to ¾ inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or

failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (i.e., stick shaker or stick pusher) are reset to lower values (i.e., higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼ inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during

all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When To Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters

states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.*, ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may

provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,980, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–18 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11307. Docket 99–NM–152–AD.

Applicability: Model DHC–7 and DHC–8 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30143 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–153–AD; Amendment 39–11308; AD 99–19–19]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 6, 1999 (6 FR 42870). That action proposed to require revising the Airplane Flight Manual (AFM) to specify that, at the first signs of ice accumulation, ''heavy'' automatic cycling mode must be used during operation of the deicing boots.

Related Proposed Rules

In addition to the supplemental proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series Airplanes	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	64 FR 38316
deHavilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support for the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, *i.e.*, visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific

consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers

conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of ½-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½ to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (*i.e.*, stick shaker or stick pusher) are reset to lower values (*i.e.*, higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy

inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal for Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (i.e., Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flight crew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When to Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated

only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests the FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training, along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [section 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; *etc.* One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master

Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action to Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.,* ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.,* normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any

AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, That it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–19 Fokker Services B.V.: Amendment 39–11308. Docket 99–NM–153–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the ''heavy'' automatic cycling mode; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30144 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–154–AD; Amendment 39–11309; AD 99–19–20]

RIN 2120–AA64

Airworthiness Directives; Short Brothers SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This amendment is

prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes was published in the **Federal Register** on July 16, 1999 (64 FR 38329). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Related Proposals

In addition to the proposed rule described previously, in June 1999, the FAA issued 18 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 19 proposed rules). These 18 proposals also were published in the **Federal Register** on July 16, 1999. (Docket 99–NM–153–AD, for Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was also issued as a supplemental notice of proposed rulemaking, and published in the **Federal Register** on August 6, 1999.) This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Manufacturer airplane model	Number	Federal Register citation
Cessna Aircraft Company Models 500, 550, and 560 Series Airplanes	99–NM–136–AD	64 FR 38374
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	64 FR 38358
Gulfstream Aerospace Model G–159 Series Airplanes	99–NM–138–AD	64 FR 38341
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	64 FR 38325
Mitsubishi Heavy Industries Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	64 FR 38371
Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes.	99–NM–141–AD	64 FR 38355
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	64 FR 38338
Fairchild Models F–27 and FH–227 Series	99–NM–143–AD	64 FR 38322
Aerospatiale Models ATR–42/ATR–72 Series	99–NM–144–AD	64 FR 38368
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	64 FR 38351
Jetstream Model 4101 Airplanes	99–NM–146–AD	64 FR 38335
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	64 FR 38319
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	64 FR 38365
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	64 FR 38348
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	64 FR 38332
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar Series Airplanes	99–NM–151–AD	64 FR 38316
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	64 FR 38362
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	64 FR 42870
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Airplanes	99–NM–154–AD	64 FR 38329

Comments

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

1. Support For the Rule

One commenter supports the proposed rule.

2. Request To Withdraw the Proposal: No Unsafe Condition

Several commenters request that the proposal be withdrawn because no unsafe condition exists on certain airplanes. One of these commenters states that the FAA is merely speculating that the proposed Airplane Flight Manual (AFM) revision will improve safety. Further, the commenter contends that the FAA cannot substantiate that the proposed AFM revision will prevent ice bridging. This same commenter also asks if the FAA met its own standards by testing the proposed procedure on each of the affected airplanes.

The FAA does not concur that no unsafe condition exists. As discussed in the preamble of the proposed rule, the FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. The FAA also discussed an accident that occurred as a result of the failure of the flightcrew to activate the wing and tail pneumatic deicing boots.

Although there may have been no reported cases of incidents or accidents on a specific airplane model, the potential still exists for reduced controllability of all airplanes equipped with pneumatic deicing boots due to adverse aerodynamic effects of ice adhering to the airplane. This AD addresses this unsafe condition.

Further, ice bridging of deicing boots was considered during development of the proposed rule. A broad representation of the aviation community was consulted, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and National Aeronautics and Space Administration (NASA). Also, articles readily accessible by the general piloting community solicited operational information concerning ice bridging of deicing boots. The FAA considers that the general consensus of the aviation community is

that little or no evidence exists of ice bridging of deicing boots with current deicing boot designs, and ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

In addition, many airplanes equipped with pneumatic deicing boots to protect the engine are operated when icing conditions are present, i.e., visible moisture and a specific temperature are observed. As discussed in Comment #3 (following this response), at least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. The FAA is unaware of any ice bridging problems associated with early operations of either the airfoil or engine pneumatic deicing boots.

In response to the commenter's question regarding the FAA meeting its own standards, the FAA infers that the commenter is requesting the basis for the FAA's determination that the proposed procedures are safe. Most aircraft certification programs have not considered the reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the pneumatic boots. The requirements of this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first, along with the periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

3. Request To Withdraw the Proposal: Possible Adverse Effects of Residual Ice

Several commenters state that deicing boots do the best job of shedding ice on a single cycle, if ice is permitted to accrete to ¼ or ½ inch before activation of the boots. One of these commenters further contends that the effect of continuous cycling in auto mode may not produce a clean shed of ice on each activation, and that residual ice must be taken into consideration before any revision to the AFM is required. Another commenter states that, although operation in the continuous mode upon first indication of ice accretion would eliminate the problem of identification of accretion, the commenter is concerned that there would then be a potential for degraded performance due to residual ice.

The FAA does not concur that the proposal should be withdrawn because of concerns over residual ice. Operation of pneumatic deicing boots typically results in persistent ice accretions on the boot surfaces, even when ¼ to ½ inch of ice is allowed to accrete prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activation of the wing and tail pneumatic deicing boots at the first sign of ice accretion, or at the annunciation of an ice detector system and periodic operation of the deicing boots will also result in persistent ice accretions. However, the proposed procedure will minimize the residual and intercycle ice accretions because the ice will be shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness resulting from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. Adverse airplane flying qualities resulting from ice accretions typically are affected by the thickness, shape, texture, and location of the ice accretion.

At least two airplane manufacturers have issued AFM's that contain procedures to activate the deicing boots at the first sign of ice accumulation. Those two airplane models have different wing and stabilizer design characteristics and different deicing boot configurations. Further, those two airplane models represent a large proportion of the airplane fleet equipped with pneumatic deicing boots. The FAA has received no reports indicating any adverse effects of residual ice resulting from early activation of the deicing boots for these airplane designs.

In addition, a number of airplane models are equipped with deicing boot systems that include automatic operating modes, wherein the boots automatically cycle at specific time intervals after being activated. This automatic cycling has surely resulted in operation of the boots with less than the recommended thickness of ice accreted. The FAA has received no reports indicating any adverse effects resulting from the use of the automatic mode.

4. Request To Withdraw or Delay: Develop More Data

Several commenters request that the FAA delay issuance of the rule until more data are developed and reviewed. Certain of these commenters also state that at the public meeting on icing (February 2–4, 1999), the consensus was that a uniform procedure cannot be adopted for all airplanes. That is, a ''blanket'' proposal for numerous airplanes (regardless of design) is inappropriate without specific consideration for the individual designs. Another one of these commenters points out that each airplane model is unique and that the operating instructions for the ice protection system for one airplane model may not be appropriate for another airplane model. That commenter further adds that the airframe manufacturer is in the best position to determine appropriate limitations.

Another one of the commenters requests that, if the proposal is not withdrawn, the issuance of any rulemaking be delayed since certain language of the requirements of the AD is confusing.

The FAA does not concur that a delay in issuing this action is appropriate. The FAA concurs that the airframe manufacturers present at the February public meeting did not support a common procedure for the operation of deicing boots. However, as mentioned previously, there have been no adverse reports on the airplane fleet equipped with pneumatic deicing boots that operate the boots at the first sign of ice accretion. With the exception of ''older'' pneumatic boots (reference comment #7, below), the FAA finds that a common procedure for boot operation is appropriate. The FAA has determined that the common procedures for operation of deicing boots as required by this AD (activation of the deicing boot system at the first sign of ice formation anywhere on the aircraft, or upon annunciation of an ice detector system, whichever occurs first, and periodic cycling of the boots) will minimize the ice accretions and thereby reduce the adverse aerodynamic effects.

To withdraw or delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists, and that the required AFM revision must be accomplished to ensure continued safety of the fleet. The fact that other data may be developed at a later time does not negate the FAA's responsibility to address the existing identified unsafe condition in a timely manner. No change is necessary to the final rule in this regard.

The FAA is unable to respond to one commenter's statement that certain language of the proposal was confusing since no example was specified.

5. Request To Withdraw Proposals for Certain Airplanes

Three commenters, all airframe manufacturers, request that the proposal be withdrawn for several airplane models [British Aerospace Model ATP airplanes, British Aerospace Model HS 748 airplanes, Dornier Model 328–100 series airplanes, and deHavilland Model DHC–7/DHC–8 series airplanes] since

they have been certified to be in compliance with part 25 of the Federal Aviation Regulations (14 CFR 25.1419). Additionally, the commenters point out that those airplanes have been certificated in accordance with the appropriate foreign civil airworthiness authorities. The commenters further explain that service experience of those airplanes does not indicate any deficiencies with regard to handling and performance due to airframe accreted ice. In conclusion, the commenters state that, in the absence of any evidence to suggest deficiencies regarding this subject, they cannot support the intent of the rule.

The FAA acknowledges that an airplane model may have design characteristics that mitigate the adverse airplane flying qualities resulting from ice accretion on deicing boot surfaces. As discussed in the proposal for this AD, the FAA has previously requested that interested persons provide information on icing system design and operations procedures concerning flight during icing conditions. The request also asked manufacturers, who are in the best position to determine those operating procedures, to provide data showing that their aircraft have safe operating characteristics with ice accreted on the protected surfaces (boots). That information was requested specifically by letter on October 1, 1998, to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). Except as discussed in Item 6 of the comment section of this final rule, no other information received caused the FAA to reconsider that an unsafe condition may exist, or that a revision of the AFM, such as required by this AD, was unsafe for those airplanes.

Additionally, similar information was specifically requested in the discussion section of the proposed rule. Of the comments to the proposal that were received by the FAA, no additional data was included for Dornier Model 328–100 series airplanes, or de Havilland Model DHC–7/DHC–8 series airplanes that caused the FAA to reconsider the previous conclusion that an unsafe condition exists. Further, no data was provided to indicate that the proposal to require activation of wing and tail pneumatic deicing boots at the first sign of ice accretion or annunciation of an ice detector system was unsafe for any particular airplane model.

United Kingdom Accident Investigation Board Preliminary Report EWC 91/18 indicated that, while on climb to 16,000 feet in the vicinity of Oxford, England, on August 11, 1991, a British Aerospace Model ATP airplane suffered a significant degradation of flying qualities and propeller icing. According to that report, the deicing boots of the airplane were not activated, and the airplane stalled, experienced severe uncontrolled roll oscillations, severe vibration that rendered the electronic flight instruments partially unreadable, and developed a high rate of descent. The deicing boots were finally activated and control of the airplane was regained after a loss of 3,500 feet in altitude. The report identified causal factors of the incident which included rapid accumulation of glaze ice that was not evident to the flightcrew, difficulty of the flightcrew to visually gauge the ice accretion thickness on the wing's leading edge, and propeller vibrations that disguised the onset of wing stall. Even though this incident occurred outside of the United States, and although this airplane model demonstrated acceptable in-flight icing airworthiness relative to FAA and Joint Airworthiness Authorities (JAA) requirements, the incident illustrates the vulnerability of this airplane model to the safety condition addressed by this AD.

One commenter, British Aerospace, has requested until October 20, 1999, to provide additional data to substantiate that the Model ATP airplanes and Model HS 748 airplanes can safely operate with ice accumulations on the protected surfaces. As discussed previously and in the NPRM, the FAA considers that this same vulnerability exists on all airplanes equipped with pneumatic deicing boots.

In the interest of safety, the FAA finds that it is not prudent to delay issuance of the final rules on those airplane models. However, British Aerospace and any other manufacturer is encouraged to request approval of an alternative method of compliance with the airworthiness directive based on substantiating data indicating that a particular aircraft can safely be operated with the ice that would accumulate on the protected surfaces prior to activation of the ice protection system.

6. Request To Withdraw the Proposal for Certain Other Airplanes

Two manufacturers request that the proposals regarding Cessna Model 500, 501, 550, 551, and 560 series airplanes, and British Aerospace (Jetstream) Model 4101 airplanes be withdrawn. The manufacturers advise that the testing summarized in their comments provides evidence that the current procedures provide a safe method to operate those airplane models. The manufacturers conclude that, based on the service history and data provided to the FAA, the proposed AFM revision for those models is unnecessary.

The FAA concurs that the notice of proposed rulemaking for Cessna Model 500, 501, 550, 551, and 560 series airplanes should be withdrawn based on the following information. The manufacturer performed a complete evaluation of the stall and handling characteristics with simulated ice shapes on the Model 550 (Bravo) series airplanes. Stall speeds and warning margins were evaluated with a ½-inch glaze ice shape and with an ice shape associated with the system failure. This ½-inch ice shape simulated the ice shape prior to deicing boot activation. Maneuver margin testing consisted of left and right 40-degree bank turns. Stall characteristics were evaluated with a ½-inch rime ice shape configuration. Stall characteristic testing consisted of wings level and 30-degree bank turns. At the conclusion of the testing it was determined that the airplane had an acceptable stall warning margin with ice shapes present. The manufacturer maintains that Model 500/501, Model 550/551, and Model 550 (Bravo) series airplanes all use a common wing airfoil with some minor differences in span and wing loading. These aircraft also use a common tail configuration (airfoil, span, and leading edge sweep).

Additionally, the FAA reviewed the Type Inspection Report (TIR) for Model 550 (Bravo) series airplane testing and found that ice shapes were placed on both the protected and unprotected surfaces.

The Model 560 (Ultra) series airplanes underwent an extensive ice shape stall investigation. This investigation consisted of stall testing of the baseline airplane and the airplane with the most adverse simulated intercycle ice shapes. The ice shapes consisted of 3-inch shapes on the surfaces protected by boots and 3-inch shapes on unprotected flight surfaces. The stall speeds determined by this testing were incorporated into the Safeflight Angle of Attack computer to increase the stall warning margin during flight in icing conditions. The Model 560 series airplanes angle of attack computer was also updated to incorporate a normal mode and an ice mode stall warning system. The changes to the angle of attack computer on Model 560 and 560 (Ultra) series airplanes were proposed by Rules Docket No. 98–NM–312–AD.

The FAA notes that extensive testing of Model 550 and 560 series airplanes (in which acceptable stall protection and maneuver margins at operational speeds were demonstrated with expected ice accretion on the deicing

boot surfaces) indicates that these airplanes can safely operate with ice accretions associated with the AFM normal operations procedures of the deicing boots. These attributes demonstrate that Model 550 and 560 series airplanes satisfactorily address the unsafe condition addressed by this AD. Since Model 500 series airplanes are similar to Model 550 series airplanes, the Model 500 series airplanes also satisfactorily addresss the unsafe condition addressed by this AD. The FAA also notes that testing of Model 560 series airplanes revealed problems in the stall warning margin for flight in icing conditions that were addressed by previously issued airworthiness directives.

The FAA also concurs that the notice of proposed rulemaking for British Aerospace Jetstream Model 4101 airplanes should be withdrawn based on the following information. In response to the FAA's October 1, 1998, letter (discussed previously), British Aerospace submitted a summary of the handling and performance flight test results that were produced during the original flight in icing certification. This summary was referenced in their response to the proposed rulemaking. The commenter volunteered to provide any reports referenced in the summary. The FAA requested and subsequently received copies of the full handling and performance flight test results for certification in the icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and the JAA draft issue of AMJ25.1419, which was used as guidance for compliance with JAR/FAR 25.1419. The FAA reviewed these reports and guidance material and finds that the Jetstream 4101 airplane was adequately tested with a variety of natural ice accretions on both the protected and unprotected surfaces. Handling and performance flight test was accomplished for the following: Normal Operation of the Deicing Boots, ½-to ¾-inch of ice on the protected wing leading edges and up to 3 inches of ice on unprotected leading edges; Simulated Failure of the Deicing Boots, approximately 1 to 1½ inches of ice on all leading edges; Ice Accreted During the Take-off Phase, a thin rough layer of ice accreted during the initial take-off phase to 400 feet, prior to operation of deicing boots.

These ice accretion depths were established to address the following: Ice accreted during the rest-time of a deicing cycle, delayed operation or failure of the system, and residual ice accumulations. The flight testing examined stall speeds, stall warning margins, stall characteristics, maneuver margins, longitudinal controllability, flap configuration changes, ability to trim, susceptibility to tailplane stall, and longitudinal, lateral, and directional stability. The angles of attack for activation of the stall warning system and stall identification system (*i.e.*, stick shaker or stick pusher) are reset to lower values (*i.e.*, higher speeds) for flight in icing and safe flight speeds (minimum operating speeds) established accordingly. Affected AFM performance information was derived for icing conditions based on the higher operating speeds, in accordance with JAA draft AMJ25.1419.

The Cessna and British Aerospace aircraft models discussed in this comment have been tested and, where appropriate, changes have been made to ensure the airplanes are safe for operations with ice accretions on the protected surfaces. Without this type of testing and substantiation, the FAA must conclude the aircraft affected by this final rule may be subject to adverse aerodynamic effects due to ice accretions on the protected surfaces prior to deicing boot operation. Other manufacturers may also develop the necessary data to substantiate that their airplanes are safe with these accretions and request approval of an alternative method of compliance.

7. Request To Differentiate Between ''Modern'' Boot Systems and ''Older'' Boot Systems

Several commenters request that the difference between the ''older'' boot systems and the ''modern'' boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of ''older'' and ''modern'' pneumatic boot systems should be provided. Therefore, for the purposes of this AD, ''modern'' pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. ''Older'' pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

8. Request To Withdraw the Proposal For Airplanes with ''Older'' Boots

Two commenters request that the proposed rules applying to Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes be withdrawn. Both commenters state that those airplane models do not meet the common definition of the word ''modern.'' (See Comment #7 of this final rule for a definition of ''modern'' as used in this AD.) One commenter states that the current AFM specifically directs the flightcrew to wait for ¼-inch of ice before activating the boots. Further, the commenter asserts that the current procedure was developed during certification and is the basis for the airplane's approval for flight into known icing. Additionally, the commenters assert that the in-service safety records for more than 40 years indicates that the existing procedures are appropriate for these airplanes. The commenter concludes that the proposed AFM revision is in direct opposition to the certification findings.

The FAA acknowledges that early activation of the ''older'' pneumatic deicing boots may create the hazard of ice bridging on the ''older'' systems. As discussed in Comment #2 previously, ''older'' boots may be susceptible to ice bridging, and the FAA concurs that requiring the activation of the boots at the first sign of icing may actually introduce an unsafe condition on those airplanes. In order to address this issue, the FAA is taking the following steps. First, to accommodate certain airplane models of the fleet (*i.e.*, Gulfstream Model G–159 series airplanes and McDonnell Douglas Model DC–3 and DC–4 series airplanes) that may be equipped with the ''older'' pneumatic deicing boot system, the FAA is considering the issuance of supplemental NPRM's for those airplane models. The purpose of the supplemental NPRM's would be to require an inspection to determine which type of pneumatic deicing boots are installed on the airplanes, and to require operation of the boots at the first sign of ice accretion if the airplanes have been retrofitted with ''modern'' boots. Second, for aircraft with ''older'' pneumatic boots installed, the FAA will continue to investigate other solutions to the unsafe condition of reduced handling qualities or controllability of the airplane due to ice accumulations

on the protected surfaces. If other solutions are identified, the FAA may consider further rulemaking.

9. Request To Revise AFM Change

One commenter requests that the proposal to operate the boots at the first sign of ice accretion be limited to the holding and approach phases of flight. The commenter states that the Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group (IPHWG) completed a comprehensive review of past icing accidents/incidents. The IPHWG concluded that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments; since these operations are conducted at lower airplane speed, instability could occur as a result of ice accumulations on the wing and tail surfaces.

The FAA does not concur that the AFM revision should be limited to the holding and approach phases of flight. The FAA acknowledges that the IPHWG is working on a proposed operations rule that may only be applicable during holding and approach phases of flight. However, the IPHWG continues to work on the proposed rule and has not reached technical agreement. Since discussions are ongoing, it would not be appropriate to assume that the IPHWG positions as presented by the commenter will necessarily be reflected in the actual published proposal.

Another commenter, an airplane manufacturer, stated that the AFM for Model SF340A/SAAB340B/SAAB 2000 series airplanes currently does not limit the operation of the deicing boots during specific phases of flight. The commenter requests that the AFM change required by paragraph (a) of the proposal be revised to limit the applicable phases of flight where the AFM specifies that deicing boots should not be used. Specifically, the commenter requests that the language be revised to read ''Deicing boots must not be used during take-off and landing.''

The FAA partially concurs, and acknowledges that clarification is necessary. It was the FAA's intent that the boots do not have to be operated at the first sign of ice accretion during those phases of flight if there are existing procedures in the AFM that prohibit the operation of the boots during specific phases of flight. However, the boots must always be operated at the first sign of ice accretion if, in accordance with the AFM, it is acceptable to operate the boots during all phases of flight. Therefore, the FAA has revised paragraph (a) of the final rule to state, ''Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.''

With respect to the request to specify that the deicing boots must not be used during take-off and landing, it would be desirable to customize the AFM limitation for specific models of airplanes. This would allow the AFM to clearly indicate to the flightcrew when the deicing boots should be deactivated, rather than necessitating that the flightcrew first determine if there are other portions of the AFM that indicate that the deicing boots should not be used during specific phases of flight. Therefore, the FAA encourages requests for approval of alternative methods of compliance to customize the AFM limitation to the specific airplane model.

However, the FAA does not concur with the request to revise the final rule that applies to Saab Model SAAB SF340A/SAAB340B/SAAB 2000 series airplanes since the existing Saab AFM does not indicate that the deicing boots should not be used during take-off and landing. If the commenter has data to indicate that the deicing boots should not be used during those phases of flight, the commenter should take action to revise the AFM and request approval of an alternative method of compliance.

10. Request To Revise Instructions on When to Deactivate the Boot System

One commenter requests that two changes be made to paragraph (a) of the proposal. The first change would be to specify that the wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions. The commenter also requests that the proposal be revised to add related procedures for operating speeds, and that related procedures for operation of the autopilot (if any) be discontinued only after the airplane is determined to be clear of ice. The commenter states that natural ice shedding, melting, or sublimation from the protected areas will mostly eliminate residual ice.

Regarding the commenter's first request, the FAA concurs. For the reasons the commenter stated, the FAA has revised paragraph (a) of the final rule from: ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice;'' to ''The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.''

Regarding the commenter's second request, the FAA considers that, since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA is considering additional rulemaking concerning operating speeds during icing conditions.

11. Requests The FAA Consider the Pilot Workload

One commenter states that the proposal would require the pilot to monitor ice formation and to activate the deicing system almost constantly. Another commenter suggests that such increase of the pilot's workload could, of itself, cause an indirect adverse impact on operational safety. The commenters request that the FAA consider the additional pilot workload if the proposal is adopted.

The FAA has previously considered the effects on the pilot of requiring that the deicing boots be activated at the first sign of ice formation anywhere on the airplane, or upon annunciation from an ice detector system. The FAA acknowledges that current procedures recommending activation of the deicing boots at a specific ice accretion thickness require the flightcrew to closely monitor the ice accretion. However, since a number of airplanes affected by this AD are equipped with deicing boot systems with automatic operating modes, operating the deicing boots at the first sign of ice accretion in an appropriate automatic mode will favorably influence flightcrew workload. For airplanes not equipped with automatic deicing boot operating modes, periodic operation of the boots can be accomplished based on time intervals consistent with existing icing conditions. The FAA considers that periodic operation of the boots is not a greater workload burden than closely monitoring the ice accretion thickness.

For the reasons stated, the FAA has determined that it is unnecessary to revise the final rule.

12. Request To Withdraw the Proposal: Provide Training Instead

Several commenters request that the FAA withdraw the proposal and ensure that appropriate information and training regarding the use of the boots is provided to pilots. The commenters also suggest that a testing program be accomplished by industry. The commenters assert that such training,

along with an analysis of the testing program, would eliminate the need for requiring that the deicing boots be activated in accordance with the proposal. One commenter also adds that the AFM should only be changed to add a warning that delayed activation of the pneumatic boot system may be unsafe. Another commenter adds that the language of the proposed AFM revision may conflict with current AFM procedures and could confuse operators.

The FAA does not concur that substituting mandatory training for issuance of an AD is appropriate in this case. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to, and mandatory for, the pilot is through incorporation of the information into the Limitations section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule in this regard.

13. Request To Consider Procedures Already in Normal Procedures Section

One commenter requests concurrence that procedures existing in the Normal Procedures section of the AFM be considered as compliant with the requirements of the proposed AD.

The FAA does not concur that procedures specified in the Normal Procedures section of the AFM are an equivalent method of compliance with the AD. The FAA considers that, since the Limitations section of the AFM is the only section of the AFM that is mandatory [§ 91.9 of the Federal Aviation Regulations (14 CFR 91.9)], the subject required revision to the AFM must be included in the Limitations section. No change is necessary to the final rule in this regard.

14. Request To Limit the AD to Only Those Operations Conducive to Icing

Two commenters request that the AFM limitation specified in paragraph (a) of the proposal be limited to those conditions where operations conducive to icing exist. The commenters provide examples of conditions where operations not conducive to icing may exist such as Hawaii; the Caribbean; short, low altitude flights in the summer; etc. One of these commenters states that, ''under the proposal, dispatch with an inoperative boot would be considered prohibited even though the deicing would never be needed.''

The FAA does not concur that revision of the AD is necessary in this regard. Paragraph (a) of the AD specifically states that wing and tail leading edge pneumatic deicing boot systems must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first. The FAA considers that, regardless of what geographic area an airplane may be flying in or what season of the year it may be, the boot system must be activated if those specified conditions occur.

Regarding dispatch with an inoperative boot, current Master Minimum Equipment List (MMEL) procedures prohibit dispatch of the airplane into known or forecast icing conditions if the deicing boots are inoperative. In the event that icing conditions are inadvertently encountered during operation in accordance with MMEL provisions, procedures exist to instruct the flightcrew to exit the icing conditions immediately. The FAA considers that those existing procedures will prevent conflict between the requirements of this AD and perceived problems regarding dispatch with inoperative boots. No change is necessary to the final rule in this regard.

15. Request To Consider Differences in Airplanes Systems

One commenter requests that the AFM revision specified in paragraph (a) of the proposed rule be revised for those airplanes that are equipped with icing detection systems. Such a revision should read ''activate the wing and tail leading edge pneumatic deicing boot system upon annunciation from an ice detector,'' rather than ''at the first sign of ice anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first.'' The commenter states that, since the sensor for the ice detection system detects ice buildup at the boot, it would make sense for airplanes that have an ice detection system to activate the boot only when ice is detected at the boot by the ice detection system. The commenter further points out that activating the boot when ice is not forming on the boot will not remove the ice formations elsewhere on the airplane, but will simply deteriorate the condition of the boot and provide no safety benefit. Additionally, the commenter adds that if the ice detection system were inoperative for dispatch, it would be appropriate as a Master Minimum Equipment List (MMEL) condition to activate the boot at the first sign of icing.

The FAA does not concur that the final rule should be revised to address procedures specifically for airplanes equipped with icing detection systems. Visual detection of icing by the flightcrew has been certificated as the primary means of ice detection. Therefore, the FAA has determined that, although ice detection systems may alert the flightcrew to the presence of icing, the flightcrew is still responsible to monitor the airframe for ice accretion. No change is necessary to the final rule in this regard. However, in the event a turbopropeller airplane equipped with pneumatic deicing boots was also equipped with an ice detection system that was approved as the primary ice detection system, the operator could request an alternative method of compliance in accordance with paragraph (b) of the final rule.

16. Request To Require Additional Operational Procedures

Several commenters propose that the FAA consider that minimum speed restrictions be used in conjunction with the early activation of the deicing boots. Some of the commenters specify that these speed additions be applied during landing approach. One of the commenters expresses concern that various reports and research indicate that increasing the angle-of attack with even a small ice formation on the airfoil can cause large increases in drag and loss of lift. The commenter contends that control of the angle-of-attack is critical in maintaining airfoil performance, and concludes that additional operational procedures must be added.

The FAA concurs that certain operational procedures may be beneficial when used with early activation of the deicing boots. As a complement to this AD, the FAA is considering rulemaking regarding minimum speeds in icing conditions. As mentioned previously, the FAA encourages manufacturers to present data via a request for approval of an alternative method of compliance to substantiate that their airplanes are either capable of flying safely with ice that accumulates prior to boot activation, or that they are not capable of flying safely but there are other means to address the unsafe condition. For example, in the case of Cessna Model 560 series airplanes, the stall warning margins were modified to ensure the airplane could safely operate with ice accretions on the protected surfaces. No change is necessary to the final rule in this regard.

17. Request To Mandate Installation of an Ice Detection System

One commenter suggests that a required installation of a reliable ice detection system might alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. The commenter notes that, historically, the problem of ice detection has been the ability of the flightcrew to either identify that the airfoil has ice adhering to it or accurately determine that a certain thickness of ice exists on the airfoil prior to activation of the boot system.

The FAA concurs that installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions. This issue is being addressed by an ARAC working group. Upon receipt of a recommendation from ARAC, the FAA may consider further rulemaking. In the interim, the FAA is issuing these airworthiness directives to impose a relatively simple deicing boot operational change to address the reduced handling qualities or controllability of the airplane due to ice accumulations on the protected surfaces. No change is necessary to the final rule in this regard.

18. Request To Require Action To Reduce Adhesion Characteristics

One commenter requests that action be taken to minimize or reduce the ice adhesion characteristics of boot material. The commenter asserts that one reason flightcrews may be seeing large amounts of residual ice may be that, as the boot ages, the tendency for residual ice to stick to the boot surface may increase if the adhesion qualities of the boot materials are not properly maintained. In addition, the commenter suggests that the use of certain compounds (*e.g.*, ICEX, an ice-phobic chemical spray) can reduce ice adhesion by substantial margins.

The FAA does not concur with the commenter's request to require rulemaking to reduce adhesion characteristics of boot material. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, ''patching,'' and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

19. Request To Consider the Associated Maintenance Procedures and Increased Costs

Several commenters point out that certain maintenance requirements should be considered if the proposed AFM revision is required. One commenter notes that a detailed review of maintenance procedures should be conducted regarding the deicing boots to ensure that, as the boot ages, the boot system continues to effectively shed ice.

Several commenters request that the FAA also consider the additional costs that the proposed AFM revision would require. One commenter states that the added cycling of the boots will require additional maintenance. The commenters express concern that the boots will wear out faster, need to be replaced at an accelerated rate, and thereby add additional costs.

The FAA acknowledges the concerns of these commenters. The FAA considered the deicing boot fatigue issues surrounding the proposed AD, such as the reliability of the deicing boots. Reliability of the deicing boots is affected by several factors, including: maintenance practices; abrasion during dry air, rain, hail, snow, and icing operations; oxidation; and, fatigue resulting from boot cycling.

However, none of the commenters provided cost estimates for any of the maintenance costs or replacement costs. The FAA did receive certain other information from a large operator of two airplane models that will be affected by this final rule. (One of the airplane models in that fleet currently observes the early-activation procedures required by this final rule and the other airplane model does not.) The operator stated that the largest contributor to periodic replacement of deicing boots on the fleet was erosion of the boot surface, rather than fatigue that would be caused by activation of deicing boots at the first sign of ice accretion.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with the AFM revision required by this AD. The FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Conclusion

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

Cost Impact

The FAA estimates that 138 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,280, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–20 Short Brothers PLC: Amendment 39–11309. Docket 99–NM–154–AD.

Applicability: SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

• Except if the AFM otherwise specifies that deicing boots should not be used for certain phases of flight (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

•Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after completion of an entire deicing cycle after leaving icing conditions.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Renton, Washington, on November 10, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30145 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–14]

Amendment to Class D and Establishment of Class E2 Airspace, Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the amendatory language of a final rule that was published in the **Federal Register** on October 15, 1999, (64 FR 55815), Airspace Docket No. 99–ASO–14.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr15oc99–5, Airspace Docket No. 99–ASO–14, published on October 15, 1999, (64 FR 55815), amended Class D surface area airspace and established Class E2 surface area airspace at Cairns Army Airfield, Fort Rucker, AL. An error was discovered in the amendatory language identifying the publication in which the airspace is described. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication for describing The Cairns Army Airfield, AL Class D surface area airspace and Class E2 surface area airspace at Fort Rucker, AL, as published in the **Federal Register** on October 15, 1999, (64 FR 55815), (Federal Register Document DOCID: fr15oc99–5; page 55815), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

ASO AL D Fort Rucker, AL [Corrected]

By removing ''DOD IFR–Supplement''

* * * * *

ASO AL E2 Fort Rucker, AL [Corrected]

By removing ''DOD IFR–Supplement''

* * * * *

Issued in College Park, Georgia, on November 3, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 99–30392 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–12]

Revision of Class E Airspace; Point Lay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Point Lay, AK. The establishment of a Nondirectional Radio Beacon (NDB) instrument approach to runway (RWY) 5 and Global Positioning System (GPS) instrument approach procedures to RWY 5 and RWY 23 at Point Lay Airport made this action necessary. This rule provides adequate controlled airspace for aircraft flying IFR procedures at Point Lay, AK.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

On July 30, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Point Lay, AK, was published in the **Federal Register** (64 FR 41358). The proposal was necessary due to the establishment of NDB and GPS instrument approaches at Point Lay, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received. The airspace description, however, had errors in the airport position and the first two coordinates listed. The airport position should read ''lat. 69°43′ 58″ N., long. 163° 00′19″ W.'' The verbiage ''bounded by lat. 69°50′30″ N long. 161°41′30″ W, to lat. 69°28′45″ N long. 163°32′30″ W'' has been changed to read ''bounded by lat. 69°47′45″ N long. 161°37′18″ W to lat. 69°25′00″ N long. 163°30′42″ W''. Additionally, the statement ''excluding that airspace within V–506'' has been added to eliminate chart clutter around the GPS waypoint located on the airway. The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive changes just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Point Lay, AK, through the establishment of NDB and GPS instrument approaches. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Point Lay, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Point Lay, AK [Revised]

Point Lay Airport,
(Lat. 69°43′58″N., long. 163°00′19″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Point Lay Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 69°47′45″ N long. 161°37′18″ W, to lat. 69°25′00″ N long. 163°30′42″ W, to lat. 69°42′35″ N long. 163°57′30″ W, to lat. 70°05′20″ N long. 162°04′35″ W, to the beginning point; and that airspace within 6 miles radius of lat. 68°51′00″ N long 166°00′00″ W; and that airspace 6 miles either side of a line from of lat. 68°51′00″ N long 166°00′00″ W, to lat 69°36′45″ N long. 163°30′ 00″ W; and that airspace 4 miles either side of a line from lat. 69°47′37″ N long. 162°33′03″ W, to lat. 69°05′17″ N long. 159°59′43″ W; excluding that airspace within V–506.

* * * * *

Issued in Anchorage, AK, on November 5, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–30121 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–15]

Establishment of Class E Airspace; Koliganek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Koliganek, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Koliganek Airport made this action necessary. The Koliganek Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Koliganek, AK.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 2, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Koliganek, AK, was published in the **Federal Register** (64 FR 48123). The proposal was

necessary due to the establishment of GPS instrument approaches at Koliganek, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Koliganek, AK, through the establishment of GPS instrument approaches. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Koliganek, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

AAL AK E5 Koliganek, AK [New]

Koliganek Airport
(Lat. 61°32′11″ N., long. 160°20′29″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Koliganek Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 59° 08′ 00″ N. long. 158° 30′ 00″ W., to lat. 59° 55′ 00″ N. long. 158° 30′ 00″ W., to lat. 59° 55′ 00″ N. long. 155° 00′ 00″ W., to lat. 59° 08′ 00″ N. long. 155° 00′ 00″ W., to the point of beginning.

* * * * *

Issued in Anchorage, AK, on November 16, 1999.

Joseph F. Woodford,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–30390 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–45]

Notification of Class E Airspace; Maple Lake, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This section modifies Class E airspace at Maple Lakes, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28 has been developed for Maple Lake Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 27, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Maple Lake, MN (64 FR 46869). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designation for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Maple Lake, MN, to accommodate aircraft executing the proposed GPS Rwy 28 SIAP for Maple Lake Municipal Airport by increasing the radius of the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, the regulation— (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 Maple Lake, MN [Revised]

Maple Lake Municipal Airport, MN
(Lat. 45°14′10″ N., long. 93°59′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Maple Lake Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on November 4, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–30391 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–44]

Establishment of Class E Airspace; Batesville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Batesville, IN. A Transponder Landing System (TLS) Standard Instrument. Approach Procedure (SIAP) to Runway (Rwy) 36 has been developed for Hillenbrand Industries Airport. Controlled airspace extending upward from 100 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 27, 1999, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Batesville, IN (64 FR 46870). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Batesville, IN, to accommodate aircraft executing the proposed TLS Rwy 36 SIAP Hillenbrand Industries Airport by creating controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Com., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Batesville, IN [New]

Batesville, Hillenbrand Industries Airport, IN
(Lat. 39°20′40″ N., long. 85°15′30″ W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of the Hillenbrand Industries Airport, excluding that airspace within the Greensburg, IN, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on November 4, 1999.

Christopher R. Blum,

Manager, Air Traffic Division

[FR Doc. 99–30393 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–46]

Modification of Class E Airspace; Fort Wayne, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fort Wayne, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 13 has been developed for Smith Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action enlarges the existing controlled airspace to the north for this airport.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60081, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 27, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Fort Wayne, IN (64 FR 46868). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Fort Wayne, IN, to accommodate aircraft executing the proposed GPS Rwy 13 SIAP for Smith Field Airport by enlarging the existing controlled airspace to the north. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Fort Wayne, IN [Revised]

Fort Wayne VORTAC
(Lat. 40°58′45″ N., long. 85°11′17″ W.)
Fort Wayne, Smith Field Airport, IN
(Lat. 41°08′36″ N., long. 85°09′10″ W.)

That airspace extending upward from 700 feet above the surface within a 14.8-mile radius of the Fort Wayne VORTAC, and within a 16.1-mile radius of the Fort Wayne VORTAC, extending from the Fort Wayne VORTAC 194° radial clockwise to the Fort Wayne VORTAC 335° radial, and within a 6.3-mile radius of the Smith Field Airport, and within 2.0 miles each side of the 308° bearing from the airport, extending from the 6.3-mile radius to 7.6 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on November 4, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–30394 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4449–F–02]

RIN 2506–AC00

Community Development Block Grant (CDBG) Program; Clarification of the Nature of Required CDBG Expenditure Documentation; Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: On July 15, 1999, HUD published an interim rule that clarifies the level of expenditure documentation that Community Development Block Grant (CDBG) grantees and subrecipients must maintain to identify the use of CDBG funds provided for assisted activities. This change provides the public with more assurance that CDBG funds are used only for allowable purposes. This rule makes final the amendments made by the July 15, 1999 interim rule, and takes into consideration the public comment received on the interim rule. HUD has adopted the interim rule without change.

DATES: *Effective Date:* December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this number is not toll-free). Persons with hearing or speech-impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The July 19, 1999 Interim Rule

On July 19, 1999 (64 FR 38812), HUD published an interim rule that clarified the level of expenditure documentation that Community Development Block Grant (CDBG) grantees and subrecipients must maintain to identify the use of CDBG funds provided for assisted activities. The lack of appropriate documentation increases the potential for misuse of CDBG funds. The change made by the July 19, 1999 interim rule provides the public with more assurance that CDBG funds are used only for allowable purposes.

OMB Uniform Administrative Requirements for grants to local governments and nonprofit organizations have long required that grantees and subrecipients maintain records which adequately identify the source and application of funds provided for financially-assisted activities. This requirement is found at 24 CFR 85.20(b)(2) for local governments and at 24 CFR 84.21(b)(2) for nonprofit organizations. These requirements are specifically made applicable to the CDBG program by 24 CFR 570.502(a)(4) and 24 CFR 570.502(b)(3), respectively. The CDBG regulations at § 570.506(h) also require maintaining financial records in accordance with the applicable requirements listed in § 570.502.

The interim rule amended § 570.506(h) to clarify the level of documentation that is needed for grantees and subrecipients to demonstrate compliance with the existing financial management requirements in 24 CFR parts 84 and 85 relating to maintaining adequate records to identify the use of funds provided for assisted activities. A broad range of types of documentation is described in an effort to reflect the myriad of different activities and financing mechanisms that can be undertaken with CDBG funds.

The preamble to the July 19, 1999 interim rule provides additional details regarding the amendment to HUD's CDBG program regulations at § 570.506(h).

II. Discussion of Public Comment Received on the July 19, 1999 Interim Rule

The public comment period on the July 19, 1999 interim rule closed on September 17, 1999. By close of business on that date, HUD had received a single public comment on the interim rule. The public commenter expressed support of the interim regulatory amendment. The commenter wrote that ''[g]rantees should not have difficulty maintaining evidence to support how CDBG funds provided to for-profit entities are expended.'' Accordingly, HUD has adopted the amendments made by the interim rule without change.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0077. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a substantial economic impact on small entities. This final rule will have no economic impact on small entities since it is a clarification of existing policy.

Environmental Impact

This amendment is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall under the exclusion in 24 CFR 50.19 (c)(1), but the amendment by itself would do so.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the Community Development Block Grants program are 14.218, 14.219, 14.225, 14.227, 14.246, and 14.248.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Accordingly, the interim rule amending 24 CFR part 570, which was published at 64 FR 38812 on July 19, 1999, is adopted as a final rule without change.

Dated: November 16, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–30366 Filed 11–19–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–143–FOR; State Program Amendment No. 98–5]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to rules

concerning revegetation standards for success for nonprime farmland for surface and underground coal mining and reclamation operations under Indiana Code (IC) 14–34. Indiana intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IND–1664), Indiana sent us an amendment to its program under SMCRA. This amendment replaces State Program Amendment No. 95–2, which we approved in the May 30, 1995, **Federal Register** (60 FR 28069). Indiana sent the amendment, which amends the Indiana Administrative Code (IAC), at its own initiative.

We announced receipt of the amendment in the August 16, 1999, **Federal Register** (64 FR (44448)). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 25, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Withdrawal of Previously Approved Amendment

Indiana notified us in its letter dated July 24, 1997 (Administrative Record No. IND–1670), that the statutory time frame for approving State Program Amendment No. 95–2 had expired prior to final approval. We approved this amendment, dated May 3, 1995 (Administrative Record No. IND–1460), on September 14, 1995 (60 FR 47692). Since Indiana did not adopt the amendment, we are removing our approval and amending 30 CFR 914.15 to reflect this decision.

B. 310 IAC 12–5–64.1 (Surface) and 12–5–128.1 (Underground) Revegetation Standards for Success for Nonprime Farmland

Since the revisions proposed for surface mining at § 12–5–64.1(c) are identical to those being proposed for underground mining at § 12–5–128.1(c), they will be combined for ease of discussion. These subsections provide the standards for success which are to be applied under the approved postmining land uses.

1. Organizational and Reference Changes

Indiana proposed paragraph notation changes to reflect the organizational changes made throughout subsections (c). Additionally, Indiana proposed revisions throughout subsections (c) to correct the reference to the ''Soil Conservation Service'' to the ''Natural Resources Conservation Service.''

We find that the organizational and reference changes do not render the Indiana regulations at 310 IAC 12–5–64.1/128.1 less effective than the Federal regulations at 30 CFR 816.116/817.116.

2. Redesignations

Indiana proposed to redesignate existing subsections (c)(5), (c)(6), (c)(7), and (c)(8) as subsections (c)(4), (c)(5), (c)(6), and (c)(7), respectively. We find that the proposed redesignations do not render the Indiana regulations at 310 IAC 12–5–64.1/128.1 less effective than the Federal regulations at 30 CFR 816.116/817.116.

3. Relocation of Existing Provisions

Indiana proposed to delete the provisions at existing subsections (c)(4) and redesignated subsections (c)(6). These provisions require that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued. Indiana proposed to relocate these provisions to existing subsections (c)(3)(B) and redesignated subsections (c)(5)(B).

Indiana also proposed to delete the provisions at redesignated subsections (c)(6) which require that once the method for establishing the standards has been selected, it may not be modified without the approval of the director of IDNR. Indiana proposed to relocate these provisions to redesignated subsections (c)(5)(E).

We find that Indiana's relocation of these provisions does not render the Indiana regulations less effective than the Federal regulations and are approving the modifications.

4. Subsections (c)(3)(C), Pastureland Production Success Standards Methodology

Indiana proposed to delete the language in existing subsections (c)(3)(C) for determining production of living plants on pastureland and replace it with the following:

> (C) A target yield determined by the following formula: Target Yield = NRCS Target Yield × (CCA/10 Year CA) where: NRCS Target Yield = the average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used, and shall be contained in the appropriate sections of the permit application. CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. 10 Year CA = the ten (10) Year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the nine (9) preceding years.

The Federal regulations at 30 CFR 816/817.116(a)(2) require standards for success to include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. As discussed in the May 29, 1992, **Federal Register** (57 FR 22655), Indiana's average county yield data contains data of yields from previously mined lands. In letters dated February 26, 1992 (Administrative Record No. IND–1036 and IND–1037), OSM asked Indiana to clarify the use of this data. In letters dated March 20, 1992 (Administrative Record No. IND–1051 and IND–1052), Indiana stated that the amount of previously mined acreage

being farmed is so limited that the inclusion of these yields essentially has no impact upon the overall yields calculated for the county average. Indiana also stated that it used the average county yield data as a weather correction factor applied to predicted soil mapping unit yields.

In the May 29, 1992, **Federal Register** (57 FR 22655, finding No. 1.c.), we found that the use of the Indiana average county yield data as the sole standard for determining success of revegetation would be less effective than the Federal regulations at 30 CFR 816/817.116(a)(2). However, we found that the use of Indiana's average county yield data as a correction factor would not be inconsistent with the Federal regulations.

The currently proposed methodology is an acceptable way to calculate production standards for non-prime farmland pastureland. This method adjusts the weighted production standard based on soil type by using a factor derived by the county average and an average of the historical county average. The weighted production standard is already approved in the Indiana program and the adjustment of this standard by county average data is reasonable. Thus, we find that the proposed method for calculating success standards on nonprime farmland pasture at 310 IAC 12–5–64.1/128.1(c)(3)(C) is no less effective than the Federal requirements for success standards at 30 CFR 816/817.116(a)(2).

5. Subsections (c)(3)(D) and (c)(5)(D), Other Success Standards

Indiana proposed to add subsections (c)(3)(D) and (c)(5)(D) to allow other methods approved by the director of the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land. This language has the same meaning as the language Indiana deleted at subsections (c)(3)(C) and (c)(5)(C). We previously approved the provisions at (c)(3)(C) and (c)(5)(C) on May 29, 1992 (57 FR 22655), with the understanding that Indiana will request our approval of other methods before using them in the Indiana program. By letters dated March 20, 1992 (Administrative Record No. IND–1051 and IND–1052), Indiana stated the IDNR will request OSM's approval for other standards prior to their use in the Indiana program if they vary significantly from the approved standards. Because the addition of the provisions at subsections (c)(3)(D) and (c)(5)(D) does not substantially change the approved Indiana program, we are approving them.

6. Subsections (c)(5)(C), Cropland Production Success Standards Methodology

At redesignated subsections (c)(5)(C), Indiana proposed to delete the existing language for determining production of living plants on cropland and replace it with the following:

(C) A target yield determined by the following formula: Target Yield = CCA × (NRCSP/NRCSC) where: CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. NRCSP = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which existed on the permit at the time the permit was issued. NRCSC = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which is shown to exist in the county on the most current county soil survey. A croppable soil is any soil which the Natural Resources Conservation Service has defined as being in capability class I, II, III, or IV.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. The above discussion in finding No. B.4, pertaining to Indiana's average county yield data containing data of yields from previously mined lands is also relevant to this proposed revision. As discussed in finding No. B.4, we had previously found that the use of Indiana's average county yield data as a correction factor was not inconsistent with the Federal regulations.

Indiana's currently proposed methodology would modify the county average by a factor that uses the NRCS predicted standard for permitted unmined soils and an NRCS predicted standard that excludes mined land. Therefore, we are approving the provisions proposed at 310 IAC 12–5–64.1/128.1(c)(5)(C).

IV. Summary and Disposition of Comments

Public Comments

OSM requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1665). By letter dated September 20, 1999, the Mine Safety and Health Administration (MSHA) responded to our request by stating that the proposed amendment does not conflict with MSHA regulations or policies (Administrative Record No. IND–1675).

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1665). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 9, 1999, we requested comments on Indiana's amendment (Administrative Record No. IND–1665), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on August 2, 1999. We approve the rules that Indiana proposed with the provision that they be published in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

For reasons discussed in finding III.A., we are also amending 30 CFR Part 914 by removing the approval of an amendment that Indiana submitted on May 3, 1995.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by removing the entire entry having the date ''May 3, 1995'' in the ''Original amendment submission date'' column, and by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 2, 1999	November 22, 1999	310 IAC 12–5–64.1(c) and 128.1(c).

[FR Doc. 99–30358 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–044–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving proposed amendments to the Maryland regulatory program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Maryland regulations regarding the design, construction and maintenance of haul roads. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.12, 920.15 and 920.16.

II. Submission of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding the design, construction and maintenance of haul roads in a letter dated August 4, 1998. OSM completed its review of the

informal amendment and submitted comments to Maryland in a letter dated May 19, 1999. By letter dated May 27, 1999 (Administrative Record No. MD–581–00), Maryland submitted its response to OSM's comments in the form of a proposed amendment to its program pursuant to SMCRA.

OSM announced receipt of the proposed amendment in the July 16, 1999 **Federal Register** (64 FR 38392), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 16, 1999.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern paragraph notations to reflect organizational changes resulting from this amendment.

1. COMAR 26.20.01.02B Definitions

The existing definition at (82), ''road'' is modified by adding the words ''surface coal'' before ''mining and reclamation operations''; adding the words ''and from'' after ''leading to''; deleting the phrase ''and such contiguous appendages as are necessary for the total structure''; and deleting the reference to active spoil disposal areas and substituting the phrase that ''road'' does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. The Director finds that the definition is now substantively identical to and therefore no less effective than the definition of ''road'' contained in the Federal Regulations at 30 CFR 701.5.

2. COMAR 26.20.02.13 Description of Proposed Mining Operations

Paragraph BB.(1) is modified by adding the following requirements: design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low water crossings, and drainage structures;

Existing paragraph BB.(2) is deleted and new paragraph BB.(2) is added to require that each permit application include:

Drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Bureau in accordance with COMAR 26.20.19;

New paragraph BB.(3) is added to require that each permit application include:

Drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Bureau in accordance with COMAR 26.20.19;

Existing paragraph BB.(3) is renumbered as BB.(4).

Existing paragraph BB.(5) is deleted and replaced with the following permit application requirement:

Drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Bureau can maximize the protection of the stream in accordance with COMAR 26.20.19:

Existing paragraph BB.(4) is renumbered as BB.(6).

New paragraph BB.(7) is added to require that each permit application include:

A description of the plans to remove and reclaim each road that will not be retained under an approved postmining land use, and the schedule for this removal and reclamation; and

New paragraph BB.(8) is added to require that each permit application include:

Design and certification of the plans and drawings for each primary road by a qualified registered professional engineer in accordance with COMAR 26.20.19.01G.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 780.37(a) and (b).

New paragraph CC. is added to require that each permit application include:

A description of each support facility to be constructed, used, or maintained within the proposed permit area, including plans and drawings. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with COMAR 26.20.19.08 and .09.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 780.38.

3. COMAR 26.20.19.01 General

New paragraphs A., B., and C. are added as follows:

A. Each road, as defined in §§ B and C of this regulation shall be classified as either a primary road or an ancillary road.

B. A primary road is any road which is:

(1) Used for transporting coal or spoil;

(2) Frequently used for access or other purposes for a period in excess of six months: or

(3) To be retained for an approved postmining land use.

C. An ancillary road is any road not classified as a primary road.

Existing paragraph A. is re-lettered as D. and further modified by adding the word ''locate'' before ''design, construction...'' and deleting the phrase ''control or minimize erosion and siltation, air and water pollution, and damage to public or private property.'' Also, new subparagraphs ''1'' through ''7'' are added. With the modifications, paragraph D states that:

Each person who conducts surface mining activities shall locate, design, construct or reconstruct, utilize, and maintain roads and restore the area to meet the requirements of the Regulatory Program to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or federal water quality standards applicable to receiving streams;

(5) Refrain from seriously altering the normal flow of water in stream beds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of the U.S. Congress; and

(7) Use nonacid and nontoxic-forming substances in road surfacing.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.150(a) and (b).

Existing paragraph B. is deleted and existing paragraph C. is re-lettered as E.

Existing paragraph D. is deleted and new paragraphs F. and G. are added as follows:

F. The plans and drawings for primary roads shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of this chapter and any prudent engineering practices. The Director finds that this paragraph is substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 780.37(b).

G. The construction or reconstruction of primary roads shall be certified in a report to the Bureau by a qualified registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. The Director finds that this paragraph is substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.151(a).

4. COMAR 26.20.19.02 Location

This section is now re-titled Location of Primary Roads.

Paragraph A. is modified to include the word ''primary,'' so that the paragraph, as modified, states that ''[P]rimary roads shall be located, insofar as possible, on the most stable available areas to minimize erosion.''

Paragraph B. is modified by adding the phrase ''in accordance with the applicable requirements of COMAR 26.20.20 and COMAR 26.20.21.02, .03, and .04.'' As modified, the paragraph states that ''[N]o part of any roads may be located in the channel of an intermittent or perennial stream unless specifically approved by the Bureau in accordance with the applicable requirements of COMAR 26.20.20 and COMAR 26.20.21.02, .03, and .04.''

Paragraph C. is modified by including the phrase ''on perennial or intermittent streams by primary roads.'' As modified, the first sentence of paragraph C states that ''[S]tream fords on perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Bureau as temporary routes during periods of construction.''

The Director finds that the changes to Paragraphs A., B., and C., above, render those paragraphs substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816.151(c)(1), 816.150(d)(1) and 816.151(c)(2), respectively.

5. COMAR 26.20.19.03 Design and Construction

This section is re-titled as Design and Construction of Primary Roads and paragraph A. is modified to include the word ''primary.'' As modified, the paragraph states that ''[P]rimary roads shall be designed and constructed or reconstructed in compliance with the standards of this regulation in order to control subsequent erosion and disturbance of the hydrologic balance.'' While this paragraph has no precise Federal counterpart, the Director finds that, as modified, the paragraph is consistent with the Federal regulations at 30 CFR 816.151.

Paragraph D., Road Embankments, is modified by adding the following subparagraphs:

(9) Each primary road embankment shall have a minimum static safety factor of 1.3. The Director finds that this proposal is substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.151(b).

(10) Each road embankment shall be constructed of fill material that contains sufficient moisture content to achieve proper compaction.

(11) A primary road embankment that is designed and constructed to meet the criteria of this section with an embankment slope not steeper than 2:1 and a foundation slope equal to or less than 25 percent shall be considered to meet the minimum static safety factor under § D(9)of this regulation.

As a result of its technical review of the informal proposed rule submitted on August 4, 1998, OSM recommended that Maryland prepare a stability analysis for road embankments. Specifically, OSM recommended that the analysis be revised to specify the angle of the side slopes and the phreatic surface in the embankment to reflect conditions to be found in a road embankment. Additionally, OSM recommended that the moisture content of the embankment material should be specified as adequate to achieve the required dry density compaction associated with the assumed soil strengths. Maryland's formal submittal addresses OSM's concerns, and the Director finds that the proposal is consistent with the Federal Regulations at 30 CFR 780.37(c) and 816.151(b) because the engineering design standards proposed in subparagraph (11) will ensure compliance with the 1.3 minimum static safety factor requirement.

6. COMAR 26.20.19.04 Drainage

This section is re-titled as Drainage Control for Primary Roads.

Subparagraph A.(1) is modified by adding the word ''primary'' before the word ''road,'' by adding ''bridges'' to the list of structures used in a primary road drainage control system, by substituting the word ''drainage'' for water, and by substituting a 2-year 24-hour precipitation event for the existing 1 year. As modified, paragraph A.(1) states that:

> Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass peak runoff from a 2-year, 24-hour precipitation event.

The Federal regulations at 30 CFR 816.151(d)(1) require that the drainage control system be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority. As part of its informal submittal of this proposed amendment dated August 4, 1998, Maryland provided a comparison study to OSM showing that drainage control structures designed to safely pass the 2-year, 24 hour storm results in safer structures than those designed using the 10-year, 6-hour storm. (Administrative Record No. MD–581–04). OSM reviewed this study and found the criteria to be acceptable. (Administrative Record No. MD–581–05). Therefore, the Director finds that the modifications to subparagraph A.1. do not render it less effective than the Federal regulations at 30 CFR 816.151(d)(1).

Existing subparagraph 2. is deleted and a new subparagraph 2. is added as follows: Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets. The Director finds that subparagraph 2, as modified, is substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.151(d)(2).

New subparagraphs (3) and (4) are added as follows:

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road. The Director finds that subparagraphs (3) and (4) are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.151 (d)(3) and (d)(4).

Paragraph C., Culverts, is modified by substituting a 2-year 24-hour precipitation event for the existing 1 year. As modified, the first sentence of the paragraph states that ''[C]ulverts shall be designed to safely pass a 2-year, 24-hour precipitation event.'' The Federal regulations at 30 CFR 816.151(d)(1) require that drainage control systems be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority. Maryland's comparison study referenced above showed that drainage control structures designed to safely pass the 2-year, 24 hour storm results in safer structures than those designed using the 10-year, 6-hour storm criteria. As mentioned previously, OSM performed a technical review of these criteria and found them to be acceptable. (Administrative Record No. MD–581–05). Therefore, the Director finds that paragraph C, as modified, remains no less effective than the Federal regulations at 30 CFR 816.151(d)(1).

7. COMAR 26.20.19.06 Maintenance

New paragraph D. is added as follows:

A road damaged by a catastrophic event, such as a flood, shall be repaired as soon as is practicable after the damage has occurred.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.150(e)(2).

8. COMAR 26.20.19.07 Removal of Roads

This section is re-titled as Reclamation of Roads.

The existing paragraph is deleted and replaced with the following:

A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts, unless approved as part of the postmining land use;

(3) Removing or disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage pattern by installing dikes or cross drains, as necessary, to control surface runoff and erosion; and

(6) scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.150(f).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. In a letter dated July 23, 1999 (Administrative Record No. MD–581–02), the U.S. Army Corps of Engineers noted that the proposed amendment requires submission of documentation of compliance with COMAR to the Bureau. The U.S. Army Corps of Engineers suggested that this responsibility be shifted to the permittee by requiring the use of agents, if appropriate, that are considered capable of fulfilling the Bureaus servicing needs. The Director notes that the existing Federal regulations require that such documentation be submitted to the regulatory authority, which, in Maryland, is the Maryland Department of the Environment, Water Management Administration, Bureau of Mines.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1999.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 27, 1999	November 22, 1999.	COMAR 26.20.01.02B(82), 26.20.02.13 BB(1) through BB(8)&CC, 26.20.19.01A through G, 26.20.19.02 A, B&C, 26.20.19.03 A&D, 26.20.19.04 A(1) through (4)&C, 26.20.19.06D, 26.20.19.07(1) through (6).

[FR Doc. 99–30357 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–246–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1501:13–1–04 of the Ohio Administrative Code (OAC) as it relates to exemptions for coal extraction incidental to government-financed highway or other construction. The amendment is intended to revise the Ohio program to include counterparts to the recently promulgated ''AML Enhancement Rule,'' which revised the Federal regulations at 30 CFR 707.5 and added a new provision, at 30 CFR 874.17.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated March 16, 1999 (Administrative Record No. OH–2178–00) Ohio submitted a proposed amendment to its program concerning exemptions for coal extraction incidental to government-financed highway or other construction. Ohio submitted the proposed amendment at its own initiative, in order to incorporate into its program the expanded exemption recently promulgated in the Federal regulations at 30 CFR 707.5, as part of the ''AML Enhancement Rule.'' Under this rule, approved Title IV abandoned mine land (AML) projects under SMCRA which involve incidental coal extraction and are less than 50 percent government financed may qualify for exemption. Projects which qualify for this expanded exemption must also meet the newly promulgated requirements contained in 30 CFR 874.17. (64 FR 7470, February 12, 1999). The proposed amendment was announced in the April 16, 1999, **Federal Register** (64 FR 18857). The initial comment period closed on May 17, 1999.

By letter dated July 9, 1999 (Administrative Record No. OH–2178–06), Ohio submitted a revised and final version of the proposed amendment. Ohio made this more recent submittal in response to an OSM, July 1, 1999, issue letter (Administrative Record No. OH–2178–05). In the letter, OSM had requested that the amendment clearly restrict exemptions to projects that are AML eligible, and clearly require that the exempted reclamation project be conducted in accordance with the provisions of 30 CFR Subchapter R.

III. Director's Findings

The following are changes to OAC Section 1501:13–1–04 made in the final submission of the proposed amendment. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

OAC 1501:13–1–04 Exemption for coal extraction incidental to government financed highway or other construction.

(a) The following sentence has been added to Subsection (A) (3): ''Funding at less than 50 percent may qualify if the project is eligible under 1513:37 of the revised code and the construction is undertaken as an approved reclamation project under Section 1513.30 or 1513.37 of the Revised Code.''

(b) New Subsection (C) is added and reads as follows:

(C) Requirements for approved reclamation projects under section 1513.30 and 1513.37 of the Revised Code with less than 50 percent government financing.

(1) Determinations. The Division of Mines and Reclamation shall determine:

(i) The likelihood of the coal being mined under a permit issued under Section 1513.07 of the Revised Code considering the coal reserves from existing mine maps or other sources, the existing environmental conditions, all prior mining activity on or adjacent to the site, current and historic coal production in the area, and any known or anticipated interest in mining the site;

(ii) The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site; and

(iii) The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(2) Concurrence. The regulatory program coordinator and the abandoned mine lands program coordinator must concur on determinations of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under this exemption and in the delineation of the boundaries of the AML project.

(3) Documentation. The AML case file must include the determinations made under paragraph (1) and (2) of this rule, the information taken into account in making these determinations, and the names of the parties making the determinations.

(4) Special Requirements. For each exempt project the division must:

(i) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(ii) Ensure that the reclamation project is conducted in accordance with the provisions of the AML program and procedures as approved by the U.S. Secretary of Interior under 30 CFR Subchapter R;

(iii) Develop site-specific reclamation requirements, including performance bonds when appropriate in accordance with approved AML procedures; and

(iv) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(5) Limitations. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (C)(2) of this rule, the contractor must obtain a permit under section 1513.07 of the Revised Code for such coal.

The changes described above revise the OAC to correspond with revisions to the Code of Federal Regulations at 30 CFR 707 and 874 as published in the February 12, 1999, **Federal Register**, 64 FR 7470. The Director finds that the revisions do not render OAC section 1501:13–1–04 inconsistent with section 528 (2) of SMCRA (30 U.S.C. 1278), and that they are substantively identical to the changes to the Federal regulatory definition of ''government-financed construction'' at 30 CFR 707.5 and to the Federal provision at 30 CFR 874.17, both of which were promulgated on February 12, 1999. 64 FR 6470.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. No comments were received.

Ohio Historical Preservation Office (OHPO)

Pursuant to 30 CFR 732.17(h)(4), the Director solicited comments on the proposed amendment from the OHPO with respect to actual or potential effects of the amendment on historic and cultural properties in the state. In accordance with the National Historic Preservation Act (NHPA), as amended (16 U.S.C. 470), the OHPO recommended the addition of language to the amendment to ensure the review determinations include the completion of coordination with the OHPO prior to initiation of the excavation and/or reclamation activities (Administrative Record No. OH–2178–04).

In response, we note that the consultation requirements of the NHPA will apply if the approval of a reclamation project involving incidental coal extraction constitutes a ''Federal undertaking,'' as that term is defined at 36 CFR 800.2(o). Therefore, we do not believe the additional language recommended by the OHPA is necessary. Moreover, as discussed in the Finding above, the proposed amendment is substantively identical to its Federal counterparts at 30 CFR 707.5 and 874.17.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The Department of the Army, Army Corps of Engineers, concurred without comment (Administrative Record No. OH–2178–02). No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's comments on the proposed amendment. EPA had no comments to offer (Administrative Record OH–2178–03).

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as revised on July 9, 1999.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 16, 1999	November 22, 1999	OAC 1501:13–1–04

[FR Doc. 99–30356 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ37–2–203; FRL–6477–3]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of Carbon Monoxide State Implementation Plan Revision; Determination of Carbon Monoxide Attainment; Removal of Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, the EPA is finalizing its determination that the New York—Northern New Jersey—Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, EPA is approving a State Implementation Plan revision submitted by the State of New Jersey on August 7, 1998. The intended effect of the revision is to remove New Jersey's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP.

EFFECTIVE DATE: This rule will be effective November 22, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

SUPPLEMENTARY INFORMATION: EPA is determining that the New York—Northern New Jersey—Long Island carbon monoxide (CO) nonattainment area [1] has attained the health-related CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New Jersey's winter-time oxygenated gasoline (oxyfuel) program is no longer needed to ensure that air quality levels remain healthful. As a consequence of

[1] This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

these determinations, EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxyfuel program as a CO control measure from the State's CO SIP. It has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS. For detail regarding this determination, the reader is referred to the proposal for today's action, published in the September 9, 1999 **Federal Register** (64 FR 48970). It should be noted that there were no adverse comments associated with the proposed removal of the winter-time oxyfuel program.

Additional details regarding the applicability of the oxyfuel program in New Jersey, EPA's authority to approve oxyfuel removal from a state's SIP, and the further demonstration that oxyfuel removal from the New York and Connecticut parts of the area, as well as New Jersey, is now technically justifiable and appropriate and will maintain healthy CO air quality concentrations, can be found in the proposal for this action and a similar proposal on New York's oxyfuel program, published in the October 8, 1999 **Federal Register** (64 FR 54851).

Conclusion

EPA is taking final action to approve New Jersey's August 7, 1998 SIP revision to remove the State's oxygenated gasoline program from the federally approved SIP. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

EPA is making its approval of today's action effective upon the date of publication in the **Federal Register**, based upon a finding of good cause. Approval of this action would give final assurance of fuel specification requirements to the industry supplying gasoline to New Jersey. Due to the impending oxyfuel program start date of November 1, on September 17, 1999, EPA issued ''no enforcement action assurance'' for New Jersey until this SIP change was effective, or until the scheduled end of the program on February 29, whichever came first. Good cause for making this rule effective upon publication is to remove, as soon as possible, the need for EPA's commitment not to enforce the oxyfuel program in New Jersey. Good cause is also to provide, as soon as possible, normal regulatory assurance regarding fuel specifications which is desired by industry.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget 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 a 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.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only two states, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This SIP revision is not subject to E.O. 13045 because it finalizes approval of a state program revision, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, 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 Office of Management and Budget, 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments, in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve amendments to state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. 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 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: November 8, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(68) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the New Jersey State Implementation Plan (SIP) for carbon monoxide concerning the oxyfuel program, dated August 7, 1998, submitted by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

Amendments to Title 7, Chapter 27 of the New Jersey Administrative Code Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' effective August 17, 1998 (as limited in section 52.1605).

3. Section 52.1605 is amended by revising the entry for Subchapter 25 under the heading Title 7, Chapter 27, to read as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels;''.	August 17, 1998	November 22, 1999 and Federal Register.	
* * * * * * *			

[FR Doc. 99–30238 Filed 11–19–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 075–1075; FRL–6462–3]

Approval and Promulgation of Air Quality Implementation Plans; Iowa Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; annual update to IBR process.

SUMMARY: EPA is updating the materials submitted by Iowa that are incorporated by reference into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA.

EFFECTIVE DATE: This action is effective November 22, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101; the EPA Office of Air and Radiation, Docket and Information Center (Air Docket), 401 M Street S.W., Room M1500, Washington, D.C. 20460; and Office of the Federal Register, 800 North Capitol Street N.W., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward West at the above Region VII address or at (913) 551–7330.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is a SIP?
What action is EPA taking in this document?
How does this rule comply with EPA Administrative Procedures?

What is a SIP?

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, incorporation by reference (IBR) procedures, and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

What Action Is EPA Taking in This Document?

On February, 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Iowa, Kansas, and Nebraska.

In this document EPA is doing the first annual update to the material being incorporated by reference by Iowa.

How Does This Rule Comply With EPA Administrative Procedures?

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's action simply codifies provisions which are already in effect as a matter of law in approved Federal and state programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

I. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 12875

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 affected state, local, and tribal governments, the nature of their concerns, copies of 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 rule does not create a 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 E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685 (October 30, 1987)) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in E.O. 12612, because it merely codifies Federal approval of preexisting requirements. The rule affects only one state, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it codifies provisions which implement a previously promulgated health or safety-based standard.

D. E.O. 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 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, 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.'' This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. In addition, this final rule merely codifies Federal approvals of state requirements which have already occurred. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action codifies Federal approvals of preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. 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 to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Iowa SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 17, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. Section 52.824 paragraph (b) is revised to read as follows:

§ 52.824 Original Identification of Plan Section.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 1, 1999, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 1, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of August 1, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901

North 5th Street, Kansas City, Kansas 66101; the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; or at EPA Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

* * * * *

[FR Doc. 99–30239 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6478–6]

RIN 2060–AI53

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT); Process Wastewater Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On June 29, 1999 (64 FR 34854), we promulgated a consolidated rulemaking that included standards for four specific source categories (i.e., acetal resins (AR), acrylic and modacrylic fiber (AMF), hydrogen fluoride (HF) and polycarbonate (PC) production), and general control requirements for certain types of emission points for hazardous air pollutants (HAP).

At the time of promulgation of the consolidated rulemaking, we deferred taking final action regarding provisions applicable to wastewater streams for the AR, AMF, and PC production source categories based on a need to propose significant changes to the wastewater provisions that were proposed on October 14, 1998 (63 FR 55178). The HF production source category does not have wastewater streams. In parallel with the promulgated consolidated rulemaking package, we published a supplemental notice of proposed rulemaking regarding wastewater provisions (64 FR 34950) applicable to wastewater streams for the AR, AMF, and PC production source categories and reopened the public comment period regarding those proposed wastewater provisions.

Today's action promulgates wastewater provisions amendments applicable to wastewater streams for the AR, AMF, and PC production source categories based on our response to comments received on the wastewater provisions proposed on June 29, 1999 (64 FR 34950).

EFFECTIVE DATE: November 22, 1999.

ADDRESSES: Docket No. A–97–17 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the final wastewater provision amendments, contact David W. Markwordt at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0837, facsimile (919) 541–0942, e-mail address markwordt.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (Act).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Technical Support Document.

The wastewater amendments promulgated today are supported by a supplementary information memorandum that contains a summary of the public comments received on the proposed wastewater provision amendments and our response to those comments. This memorandum may be obtained from the docket for this rule, A–97–17 (see *Docket*). The title of the memorandum is ''Generic Maximum Achievable Control Technology—Supplementary Information for Acetal Resins, Acrylic and Modacrylic Fiber, and Polycarbonate Production Wastewater Provisions.'' The Supplementary Notice of Proposed Rulemaking (SNPR), the promulgated regulatory text, and supporting documentation are available in Docket No. A–97–17 or by request from our Air and Radiation Docket and Information Center (see **ADDRESSES**).

Technology Transfer Network

In addition to being available in the docket, an electronic copy of today's amendments is also available through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this preamble is written using plain language. Thus, the use of ''we'' in this notice refers to the EPA. The use of ''you'' refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

Regulated Entities

Entities potentially regulated are those that produce AR, AMF, and PC and are major sources of HAP as defined in section 112 of the Act. Regulated categories and entities include:

Category	Regulated entities [a]
Industry	Producers of homopolymers and/or copolymers of alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units.

Category	Regulated entities [a]
	Producers of polycarbonate.

[a] This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1104(a)(1), (b)(1), (c)(1), and (d)(1) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial review. Under section 307(b)(1) of the Act, judicial review of these final wastewater provision amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 21, 2000. Under section 307(d)(7)(B) of the Act, only an objection to these wastewater provisions amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. What Is the Background for These Wastewater Provision Amendments?

On June 29, 1999 (64 FR 34854), we promulgated a consolidated rulemaking that included generic MACT standards under section 112 of the Act for certain small source categories consisting of five or fewer sources. At that time, we proposed amendments to the provisions applicable to wastewater and certain liquid streams in open systems and deferred taking final action on those provisions until now. Today's action finalizes these amendments based on comments received on the proposed amendments and our response to those comments.

II. Compliance Dates

The compliance dates for the standards promulgated on June 29, 1999 (64 FR 34854) for the AR, AMF, and PC production source categories are July 1, 2002 for existing sources and upon startup after June 29, 1999 for new sources. Additional compliance time is not warranted for existing sources, and there have not been any new AR, AMF, and PC production facilities that would warrant specifying a different compliance date for new sources. Therefore, although we deferred action on the wastewater provisions for the AR, AMF, and PC production source categories, the dates for compliance with the wastewater provisions adopted by this action will be the same as for the other provisions we previously promulgated on June 29, 1999.

III. Comments Received on the Proposed Wastewater Provisions Amendments

We received no major comments on the wastewater provisions amendments proposed on June 29, 1999 (64 FR 34950). We have made limited clarifying changes and some editorial changes in response to comments received. Clarifying changes include (1) amending 40 CFR part 63, subpart YY by replacing the term ''chemical manufacturing process unit'' and ''CMPU'' with the phrase ''a process unit whose primary product is a product produced by a source category subject to this subpart''; (2) amending 40 CFR part 63, subpart YY applicability tables for process wastewater requirements to reflect that both Group 1 and Group 2 wastewater streams are subject to requirements under § 63.1106(a); and (3) amending 40 CFR part 63, subpart YY to clarify that when a source subject to this subpart is colocated with a Synthetic Organic Chemical Manufacturing Industry (SOCMI) source, and a single wastewater treatment facility treats similar wastewaters from both sources, a certification by the treatment facility that they will manage and treat the waste in conformity with the specific control requirements set forth in 40 CFR 63.133 through 63.147 will also be deemed sufficient to satisfy the certification requirements for the generic MACT wastewater provisions.

A supplementary information memorandum that contains a summary of the public comments received on the proposed wastewater provisions amendments and our response to those comments may be obtained from the docket for this rule, A–97–17 (see *Docket*).

IV. Summary of Final Wastewater Provisions Amendments

The final wastewater provisions amendments incorporate and cross-reference wastewater provisions of the HON for the AR, AMF, and PC production source categories. These final amendments respond to comments received on the proposed wastewater provisions published on October 14, 1998 (63 FR 55178), and the proposed amendments to those provisions published on June 29, 1999 (64 FR 34950). In addition, these final amendments reflect our original intent regarding ''point of determination'' measurements and ''treatment and destruction'' requirements for process wastewater, and that requirements for maintenance wastewater and liquid streams in open systems be included.

The final amendments for process wastewater, maintenance wastewater, and liquid streams in open systems within the regulated process unit directly refer to HON wastewater requirements. For process wastewater, you are required to make a group determination for each wastewater stream based on flow rate and organic HAP concentration. If a process wastewater stream is determined to be Group 1, you must comply with specific requirements for waste management units to suppress emissions, and requirements to treat the wastewater streams to reduce the organic HAP concentration. The suppression requirements in the referenced sections of the HON are equivalent in stringency to the wastewater requirements that were initially proposed on October 14, 1998 (63 FR 55178) for most emissions points associated with wastewater streams.

The maintenance wastewater provisions require, for each maintenance wastewater stream that contains organic HAP, that you develop and follow procedures to manage wastewaters generated during maintenance activities so that emissions are minimized. The provisions for liquid streams in open systems apply to drain or drain hubs, manholes, lift stations, trenches, pipes, oil/water separators, and tanks within the regulated process unit, and require that you implement specific emission reduction techniques for each type of equipment.

V. Summary of Impacts

We estimate that the impacts for air emissions will be negligible because AR, AMF, and PC production affected sources that will be subject to these requirements are already well controlled. Similarly, water pollution and solid waste, and increases in energy use resulting from the use of control devices will be negligible. Based on

previous impacts analyses associated with the application of the control and recovery devices required under the standards and because each of the three subject source categories have only five or fewer major sources, we believe that there will be minimal, if any, adverse environmental or energy impacts associated with the final amendments.

Likewise, based on available information, we estimate that the cost and economic impacts of the final wastewater provisions amendments for the three source categories being regulated will be insignificant or minimal. The economic analyses for each of the three source categories can be obtained from the docket (see *Docket*).

VI. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements associated with these wastewater provisions amendments do not add to the promulgated rule information collection requirements. The information collection requirements of the promulgated rule for the generic MACT standards were submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* Under the promulgated rule, we prepared an Information Collection Request (ICR) document (ICR No. 1750.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. We may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB approved the information collection requirements for the AR, AMF, and PC production source categories and assigned the OMB control number 2060–0420 to the ICR. This approval expires September 30, 2002.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

The final wastewater provisions amendments for AR, AMF, and PC production do not constitute a ''significant regulatory action'' as defined under Executive Order 12866, and therefore, are not subject to review by OMB.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule 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, as specified in Executive Order 13132. This rule has minimal direct affects on the 9 plants which are impacted by this rule. This rule has even less impacts on States within which the plants reside. Thus,the requirements of section 6 of the Executive Order do not apply to this rule.

D. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), we are required to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts.

Today's action is not subject to the requirements of the RFA as modified by SBREFA because it does not impose any regulatory requirements on small entities.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), we must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any 1 year. Under section 203, we are required to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Under section 205 of UMRA, we must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. We are required to select the

least burdensome alternative for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless we explain why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because the promulgated rule and these final amendments to the rule do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments would not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. National Technology Transfer and Advancement Act

Under 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), we are directed to use voluntary consensus standards instead of government-unique standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. By doing so, the Act is intended to reduce the cost to the private and public sectors.

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 standard bodies. We are required by the NTTAA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

As part of a larger effort, we are undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist us in identifying potentially-applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

This action does not involve the promulgation of any new technical standards. It does, however, cross-reference existing technical standards, including government-unique technical standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations, therefore section 12(d) does not apply.

G. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that we determine (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

This amendatory action is not subject to Executive Order 13045 because it does not constitute an economically significant regulatory action as defined by Executive Order 12866 and because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13084

Under Executive Order 13084, we 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 cost incurred by the tribal governments, or we consult with those governments. If we comply by consulting, we are required to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our 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, we are required 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 amendments implement requirements specifically set forth by Congress in section 112 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, we submitted a report containing these final amendments 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 these final amendments in the **Federal Register**. This is not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act.

List of Subjects in 40 CFR Part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Air emissions control, Hazardous air pollutants, Polycarbonates production, Process wastewater streams, Wastewater.

Dated: November 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

2. Section 63.1100 is amended by adding paragraph (g)(5) as follows:

§ 63.1100 Applicability.

* * * * *

(g) * * *

(5) *Overlap of subpart YY with other regulations for wastewater.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to the wastewater requirements of this subpart and the wastewater requirements of subparts F, G, and H of this part (collectively known as the ''HON'') shall be deemed to be in compliance with the requirements of this subpart if it complies with either set of requirements. In any instance where a source subject to this subpart is colocated with a Synthetic Organic Chemical Manufacturing Industry (SOCMI) source, and a single wastewater treatment facility treats both

Group 1 wastewaters and wastewater residuals from the source subject to this subpart and wastewaters from the SOCMI source, a certification by the treatment facility that they will manage and treat the waste in conformity with the specific control requirements set forth in 40 CFR 63.133 through 63.147 will also be deemed sufficient to satisfy the certification requirements for wastewater treatment under this subpart.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to control requirements in the Benzene Waste NESHAP (subpart FF of part 61 of this chapter) and this subpart is required to comply with both rules.

3. Section 63.1101 is amended by adding definitions in alphabetical order to read as follows:

§ 63.1101 Definitions.

* * * * *

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.144(b).

Annual average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.144(c).

* * * * *

Group 1 wastewater stream means a process wastewater stream at an existing or new source that meets the criteria for Group 1 status in § 63.132(c).

Group 2 wastewater stream means a process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

* * * * *

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the process unit, whose primary product is a product produced by a source category subject to this subpart, into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the process unit, whose primary product is a product produced by a source category subject to this subpart, for repair.

* * * * *

Oil-water separator or *organic-water separator* means a waste management unit, generally a tank used to separate oil or organics from water. An oil-water or organic-water separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to additional waste management units such as an air flotation unit, clarifier, or biological treatment unit. Examples of an oil-water or organic-water separator include, but are not limited to, an American Petroleum Institute separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

* * * * *

Point of determination means each point where process wastewater exits the process unit, whose primary product is a product produced by a source category subject to this subpart.

Note to definition for point of determination: The regulation allows determination of the characteristics of a wastewater stream at the point of determination or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 9 compounds (as defined under this subpart) as determined in § 63.144. Such changes include losses by air emissions, reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams, and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy hazardous air pollutants.

* * * * *

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown, water formed during a chemical reaction or used as a reactant, water used to wash impurities from organic products or reactants, equipment washes between batches in a batch process, water used to cool or quench organic vapor streams through direct contact, and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

Process wastewater stream means a stream that contains process wastewater.

* * * * *

Table 9 compounds means compounds listed in Table 9 of subpart G of this part.

* * * * *

Wastewater is either a process wastewater or a maintenance wastewater and means water that:

(1) Contains either:

(i) An annual average concentration of Table 9 compounds (as defined under this subpart) of at least 5 parts per million by weight at the point of determination and has an annual average flow rate of 0.02 liter per minute or greater, or

(ii) An annual average concentration of Table 9 compounds (as defined under this subpart) of at least 10,000 parts per million by weight at the point of determination at any flow rate, and that

(2) Is discarded from a process unit, whose primary product is a product produced by a source category subject to this subpart.

Wastewater stream means a stream that contains wastewater.

* * * * *

4. Section 63.1103 is amended by:

a. Adding entries 6, 7, and 8 in table 1 of paragraph (a)(3);

b. Adding entries 8, 9, and 10 in table 2 of paragraph (b)(3)(i);

c. Adding entries 7, 8, and 9 in table 5 of paragraph (d)(3); and

d. Adding entries 6, 7, and 8 in table 6 of paragraph (d)(3) as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(a) * * *

(3) * * *

TABLE 1. TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *

TABLE 1. TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate * * *	And if * * *	Then you must * * *
* *	* * *	* *
6. An acetal resins production process unit that generates process wastewater.	The process wastewater stream is a Group 1 or Group 2 wastewater stream.	Comply with the requirements of § 63.1106(a).
7. An acetal resins production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
8. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * *

(b) * * *

(3) * * *

(i) * * *

TABLE 2. TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (B)(3)(I) OF THIS SECTION?

If you own or operate * * *	And if * * *	Then you must * * *
* *	* * *	* *
8. An acrylic and modacrylic fiber production process unit that generates process wastewater.	The process wastewater stream is a Group 1 or Group 2 wastewater stream.	Comply with the requirements of § 63.1106(a).
9. An acrylic and modacrylic fiber production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
10. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * *

(d) * * *

(3) * * *

TABLE 5. TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION EXISTING AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
* *	* * *	* *
7. A polycarbonate production process unit that generates process wastewater.	The process wastewater stream is a Group 1 or a Group 2 wastewater stream.	Comply with the requirements of § 63.1106(a).
8. A polycarbonate production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
9. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * *

TABLE 6. TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION NEW AFFECTED SOURCE?

If you own or operate * *	And if * * *	Then you must * * *
* *	* * *	* *
6. A polycarbonate production process unit that generates process wastewater.	The process wastewater stream is a Group 1 or a Group 2 wastewater stream.	Comply with the requirements of § 63.1106(a).
7. A polycarbonate production process unit that generates maintenance wastewater.	The maintenance wastewater contains organic HAP.	Comply with the requirements of § 63.1106(b).
8. An item of equipment listed in § 63.1106(c)(1).	The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	Comply with the requirements in Table 35 of subpart G of this part.

* * * * *

5. Section 63.1106 is added to subpart YY to read as follows:

§ 63.1106 Wastewater provisions.

(a) *Process wastewater.* Except as specified in paragraphs (a)(1) through (a)(16) and paragraph (d) of this section, the owner or operator of each affected source shall comply with the HON process wastewater requirements in §§ 63.132 through 63.148.

(1) When terms used in §§ 63.132 through 63.148 are defined in § 63.1101, the definition in § 63.1101 shall apply, for the purposes of this subpart. For terms used in §§ 63.132 through 63.148 that are not defined in § 63.1101, the definitions in § 63.101 and § 63.111 shall apply.

(2) When the term chemical manufacturing production process unit, or CMPU, is used in §§ 63.132 through 63.148, the phrase ''a process unit whose primary product is a product produced by a source category subject to this subpart'' shall apply, for the purposes of this subpart.

(3) Owners and operators of affected sources are not required to comply with § 63.132(b)(1) and (d) and § 63.138(c). Further, owners and operators are exempt from all requirements in §§ 63.132 through 63.148 that pertain solely and exclusively to organic HAP listed in Table 8 of subpart G of this part.

(4) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the alternative nonopacity emission standard provisions in § 63.6(g) shall apply, for the purposes of this subpart.

(5) When the HON storage vessel requirements for internal floating roofs contained in § 63.119(b) are referred to in § 63.133(a)(2)(ii), the requirements in § 63.1063(a)(1)(i), (2), and (b) shall apply, for the purposes of this subpart.

(6) When the HON storage vessel requirements for external floating roofs in § 63.119(c) and § 63.120(b)(5) and (6) are referred to in § 63.133(a)(2)(iii) and (d), the requirements in § 63.1063(a)(1)(ii), (2), and (b) shall apply, for the purposes of this subpart.

(7) For the purposes of this subpart, § 63.1063(c)(2)(iv) shall apply instead of § 63.133(e).

(8) When § 63.143(c), (d), (e)(3) and § 63.146(a) require the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g), the owner or operator requesting to monitor alternative parameters shall follow the procedures specified in § 63.1108(c) or as specified in a referenced subpart.

(9) When § 63.147(d) requires the owner or operator to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), the owner or operator shall keep records of each continuously monitored parameter for each operating day as specified in § 63.998(b).

(10) When § 63.132(a) and (b) refer to the ''applicable dates specified in § 63.100 of subpart F of this part,'' the applicable compliance dates specified in § 63.1102 shall apply, for purposes of this subpart.

(11) Where § 63.152(b) and/or the Notification of Compliance Status is referred to in §§ 63.132 through 63.148, the Notification of Compliance Status requirements contained in § 63.1110(a)(3) shall apply, for purposes of this subpart.

(12) Where § 63.152(c) and/or the Periodic Report requirements are referred to §§ 63.132 through 63.148, the Periodic Report requirements contained in § 63.1110(a)(4) shall apply, for purposes of this subpart.

(13) When Method 18 of appendix A to part 60 of this chapter is specified in § 63.139(e)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2), either Method 18 or Method 25A may be used. The use of Method 25A of appendix A to part 60 of this chapter shall comply with paragraphs (a)(13)(i) and (a)(13)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A of appendix A of part 60 of this chapter shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A of appendix A of part 60 of this chapter is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(14) When the HON recordkeeping requirements for by-pass lines in § 63.118(a)(3) is referred to in § 63.148(f), the requirements in § 63.998(d)(1)(ii)(A) shall apply, for the purposes of this subpart.

(15) When the Initial Notification requirements in § 63.182(b) are referred to in § 63.148(j), the requirements in § 63.1110(c) shall apply, for the purposes of this subpart.

(16) For the purposes of this subpart, § 63.148(k) shall not apply.

(b) *Maintenance wastewater.* The owner or operator of each affected source shall comply with the HON maintenance wastewater requirements in § 63.105. When terms used in § 63.105 are defined in § 63.1101, the definition in § 63.1101 shall apply, for the purpose of this subpart. For terms used in § 63.105 that are not defined in § 63.1101, the definitions in § 63.101 and § 63.111 shall apply.

(c) *Liquid streams in open systems.* The owner or operator shall comply with the provisions of Table 35 of subpart G of this part for each item of equipment meeting the criteria specified in paragraphs (c)(1) through (3) of this section and either paragraph (c)(4)(i) or (ii) of this section, with the exceptions provided in paragraphs (c)(5) and (6) of this section.

(1) The item of equipment is one of the types of equipment identified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Drain or drain hub;

(ii) Manhole (including sumps and other points of access to a conveyance system);

(iii) Lift station;

(iv) Trench;

(v) Pipe;

(vi) Oil/water separator; and

(vii) Tanks with capacities of 38 m^3 or greater.

(2) The item of equipment is part of an affected source that is subject to this subpart.

(3) The item of equipment is controlled less stringently than in Table 35 of subpart G of this part, and the item of equipment is not otherwise exempt from the provisions of this subpart, or a referenced subpart.

(4) The item of equipment:

(i) Is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with a total annual average concentration greater than or equal to 10,000 parts per million by weight of Table 9 compounds (as defined under this subpart) at any flow rate; or a total annual average concentration greater than or equal to 1,000 parts per million by weight of Table 9 compounds (as defined under this subpart) at an annual average flow rate greater than or equal to 10 liters per minute.

(ii) Is a tank that receives one or more streams that contain water with a total annual average concentration greater than or equal to 1,000 parts per million by weight of Table 9 compounds (as defined under this subpart) at an annual average flow rate greater than or equal to 10 liters per minute. The owner or operator shall determine the characteristics of the stream as specified in paragraphs (c)(4)(ii)(A) and (B) of this section.

(A) The characteristics of the stream being received shall be determined at the inlet to the tank.

(B) The characteristics shall be determined according to the procedures in § 63.144(b) and (c).

(5) When terms used in Table 35 of subpart G of this part are defined in § 63.1101, the definition in § 63.1101 shall apply, for the purpose of this subpart. For terms used in Table 35 of subpart G of this part that are not defined in § 63.1101, the definitions in § 63.101 and § 63.111 shall apply.

(6) When Table 35 of subpart G of this part refers to 40 CFR 63.119(e)(1) or (e)(2) in the requirements for tanks, the requirements in § 63.982(a)(1) shall apply, for purposes of this subpart.

(d) The compliance date for the affected sources subject to the provisions of this section is specified in § 63.1102.

[FR Doc. 99–30230 Filed 11–19–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6478–8]

RIN 2060–AG91

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: On June 29, 1999, we issued the National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT) (64 FR 34854). This final rule corrections serve to clarify and correct errors in the promulgated rule.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: For information concerning these corrections amendments, contact David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–0837, facsimile: (919) 541–0942, electronic mail address: markwordt.david@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities that will potentially be affected by these corrections are those that produce acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate and are major sources of hazardous air pollutants as defined in section 112 of the Clean Air Act (Act). The regulated categories and entities include the following:

Category	Regulated entities [a]
Industry	Producers of homopolymers and/or copolymers of alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of, and recoverers of HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum). Producers of polycarbonate.

[a] This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1104(a)(1), (b)(1), (c)(1), and (d)(1) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Is the Background for the Corrections?

On June 29, 1999 (64 FR 34854), we published the National Emission Standards for Hazardous Air Pollutants: Generic MACT final rule which promulgated standards for four major HAP source categories (i.e., acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate production). The proposal for the Generic MACT rule was published on October 14, 1998 (63 FR 55178), and given the size of the proposed rule, we allowed for a 90-day public comment period even though we were under a May 15, 1999 court ordered deadline for the Administrator's signature of the final rule. Because of the short time period between proposal and promulgation and the many changes made to the proposal package, some inadvertent errors were made. Today's action consists of editorial, cross-reference, and clarifying corrections to the promulgated Generic MACT rule published on June 29, 1999 (64 FR 34854). These corrections will become effective immediately (without further rulemaking action) on November 22, 1999. We have determined that it is unnecessary to provide prior notice and opportunity to comment on these corrections. In one case, we determined an opportunity for public comment is warranted; we are proposing amendments to address this case in a separate notice.

Today's action corrects typographical, grammatical, and cross-reference errors. For example, as promulgated, § 63.998(a)(1)(iii)(A) incorrectly referred the reader to § 63.999(c)(8) for the requirement for an owner or operator to report times and duration of all periods during which the flare or all the pilot flames are absent. The correct citation for this requirement is § 63.999(c)(3) and today's action makes the necessary changes to reflect the accurate citation. For another example, § 63.1012(f) incorrectly includes a citation with two repetitive paragraph designations (*i.e.*, § 63.1003(e)(e)). Today's action corrects that error by removing one of those paragraph designations (*i.e.*, § 63.1003(e)).

One of the corrections is in wording. We made an error in Table 2 to § 63.1103(b)(3)(i), item 4, that could result in control applicability errors. At promulgation, Table 2 to § 63.1103(b)(3)(i), item 4, erroneously required that an owner or operator of a new or modified source that met specified criteria would be subject to new source requirements. We should have specified that an owner or operator of a new or reconstructed source, not modified source, that met specified criteria would be subject to new source requirements. We have corrected this error by replacing the word ''modified'' with ''reconstructed.''

II. What Are the Impacts Associated With the Corrections?

This action consists of corrections and clarifications of our intent at the time of

promulgation of 40 CFR part 63, subparts SS, TT, UU, WW, and YY, and will not affect the estimated emissions reduction or the control costs for the standards promulgated for AR, AMF, HF, and PC production source categories on June 29, 1999 (64 FR 34854). These clarifications and corrections should make it easier for owners and operators of affected sources, and for local and State authorities, to understand and implement the requirements found in these subparts.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* We submitted an Information Collection Request (ICR) document (ICR No. 1871.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740. We 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 approved the information collection requirements under the Generic MACT rule for the AR, AMF, HF, and PC production source categories and assigned the OMB control number 2060–0420 to the ICR. This approval expires September 30, 2002.

These corrections will not impact the information collection estimates made previously for the Generic MACT consolidated rulemaking package. Therefore, the ICR has not been revised.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that these correcting amendments do not qualify as a ''significant regulatory action'' and, therefore, are not subject to review by OMB.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule 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, as specified in Executive Order 13132. This rule has minimal direct affects on the 10 plants which are impacted by this rule. This rule has even less impacts on States within which the plants reside. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's corrections will not have a significant impact on a substantial number of small entities because they clarify and make corrections to the promulgated 40 CFR part 63, subparts SS, TT, UU, WW and YY, and do not impose any additional regulatory requirements on owners or operators of affected sources regulated by standards promulgated on June 29, 1999 (64 FR 34854).

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995, Pub. L. 104–4, we must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Section 203 requires us to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of UMRA, we must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be

prepared. The Agency must select the least burdensome alternative from those alternatives for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because these corrections do not include a 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 1 year, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by these correcting amendments, we are not required to develop a plan with regard to small governments. Therefore, the requirements of UMRA do not apply to this action.

G. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the corrections, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing these corrections and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action does not constitute a ''major rule'' as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Under 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), we are directed to use voluntary consensus standards instead of government-unique standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. By doing so, the Act is intended to reduce the cost to the private and public sectors.

Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), International Organization for Standardization (IOS), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires that we provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

As part of a larger effort, we are undertaking a project to cross-reference existing voluntary consensus standards in testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist us in identifying potentially applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

This action does not require the use of any new technical standards, therefore section 12(d) does not apply.

I. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that we determine (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

These corrections are not subject to Executive Order 13045 because they do not constitute an economically significant regulatory action as defined by Executive Order 12866 and because they do not establish an environmental standard intended to mitigate health or safety risks.

J. Executive Order 13084

Under Executive Order 13084, we 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 cost incurred by the tribal governments, or we consult with those governments. Under Executive Order 13084, if we comply by consulting, we are required to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our 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, we are required 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 corrections do not impose any duties or compliance costs on Indian tribal governments. Further, the corrections provided herein do not significantly alter the control standards imposed by subparts SS, TT, UU, WW, and YY, including any that may affect communities of Indian tribal governments. Hence, today's action does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

List of Subjects for 40 CFR Part 63

Acetal resins production, Acrylic and modacrylic fiber production, Air emissions control, Equipment leaks, Hazardous air pollutants, Hydrogen fluoride production, Polycarbonate production, Process vents, Reporting and recordkeeping requirements, Storage vessels.

Dated: November 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.981 is amended by adding in alphabetical order a definition for *recovery operations equipment* as follows:

§ 63.981 Definitions.

* * * * *

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation units, condensers, etc. Equipment used for wastewater treatment shall not be considered recovery operations equipment.

* * * * *

3. Section 63.982 is amended by revising paragraph (f)(1) as follows:

§ 63.982 Requirements.

* * * * *

(f) * * *

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (e.g., the requirements of paragraph (a)(2) of this section for process vents, and the requirements of paragraph (a)(3) of this section for transfer racks); or

* * * * *

4. Section 63.983 is amended by revising paragraph (b)(1)(i)(B) as follows:

§ 63.983 Closed vent systems.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Conduct annual inspections for visible, audible, or olfactory indications of leaks.

* * * * *

5. Section 63.987 is amended by revising the last sentence of paragraph (c) as follows:

§ 63.987 Flare requirements.

* * * * *

(c) * * * Flare flame monitoring and compliance records shall be kept as specified in § 63.998(a)(1) and reported as specified in § 63.999(a).

6. Section 63.998 is amended by revising the last sentence of paragraph (a)(1)(iii)(A), revising the first sentence of paragraph (a)(2)(ii)(A), and revising paragraph (a)(2)(ii)(B)(6) as follows:

§ 63.998 Recordkeeping requirements.

(a) * * *

(1) * * *

(iii) * * *

(A) * * * This record shall be submitted in the periodic reports as specified in § 63.999(c)(3).

* * * * *

(2) * * *

(ii) * * *

(A) *General requirements.* Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the data specified in paragraphs (a)(2)(ii)(B) through (C) of this section, as applicable, measured during each performance test performed pursuant to § 63.988(b), § 63.990(b), § 63.994(b), or § 63.995(b), and also include that data in the Notification of Compliance Status required under § 63.999(b). * * *

(B) * * *

(6) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the process vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, record the percent reduction of organic regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 63.997(e)(2)(iii) at the outlet of the combustion device.

* * * * *

7. Section 63.999 is amended by revising the last sentence of paragraph (c)(6)(i), and revising the first sentence of paragraph (c)(6)(iv) as follows:

§ 63.999 Notifications and other reports.

* * * * *

(c) * * *

(6) * * *

(i) * * * If the owner or operator elects not to retain the daily average values pursuant to § 63.998(b)(5)(ii)(A), the owner or operator shall report this in the Periodic Report.

* * * * *

(iv) If the owner or operator has chosen to use the alternative recordkeeping requirements of § 63.998(b)(5), and has not notified the Administrator in the Notification of Compliance Status that the alternative recordkeeping provisions are being implemented as specified in paragraph (b)(5) of this section, the owner or operator shall notify the Administrator in the Periodic Report submitted immediately preceding implementation of the alternative. * * *

* * * * *

8. Section 63.1000 is amended by revising paragraph (c)(2) as follows:

§ 63.1000 Applicability.

* * * * *

(c) * * *

(2) *Equipment in service less than 300 hours per calendar year.* Equipment that is in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 63.1006 through 63.1015 if it is identified as required in § 63.1003(b)(5).

* * * * *

9. Section 63.1001 is amended by revising the definitions for *connector* and *first attempt at repair* as follows:

§ 63.1001 Definitions.

* * * * *

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (e.g., porcelain, glass, or glass-lined) as described in § 63.1008(d)(2).

* * * * *

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.1004(b) and, as applicable, in § 63.1004(c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

* * * * *

10. Section 63.1002 is amended by revising the section heading, revising the heading for paragraph (a), and revising paragraph (b), introductory text, as follows:

§ 63.1002 Compliance assessment.

(a) *General procedures for compliance assessment.* * * *

(b) *Alternative means of emission limitation.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 63.1006(e)(4) for valves designated as having no detectable emissions, § 63.1011(b) for pressure relief devices, or § 63.1012(f) for compressors operating under the alternative compressor standard.

* * * * *

11. Section 63.1003 is amended by revising the first sentence of paragraph (c)(2), revising paragraphs (c)(5)(i) and (e)(1) as follows:

§ 63.1003 Equipment identification.

* * * * *

(c) * * *

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 63.1006(e)(2) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) of this section apply. * * *

* * * * *

(5) * * *

(i) The owner or operator of equipment designated as unsafe-to-monitor except connectors meeting the provisions of § 63.1008(d)(1) according to the provisions of paragraph (c)(1) of this section shall have a written plan

that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 63.1005 if a leak is detected.

* * * * *

(e) * * *

(1) *Designation and criteria.* Equipment may be designated as having no detectable emissions if it has no external actuating mechanism in contact with the process fluid and is operated with emissions less than 500 parts per million above background as determined by the method specified in § 63.1004(b) and (c).

* * * * *

12. Section 63.1004 is amended by revising the second sentence of paragraph (c), introductory text, and paragraph (c)(1) as follows:

§ 63.1004 Instrument and sensory monitoring for leaks.

* * * * *

(c) * * * If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(5) of this section. * * *

(1) The requirements of paragraphs (b)(1) through (b)(5) of this section shall apply.

* * * * *

13. Section 63.1005 is amended by revising paragraph (d) as follows:

§ 63.1005 Leak repair.

* * * * *

(d) *Unsafe-to-repair connectors.* Any connector that is designated, as described in § 63.1003(d), as an unsafe-to-repair connector is exempt from the requirements of § 63.1008(c), and paragraph (a) of this section.

* * * * *

14. Section 63.1012 is amended by revising the first sentence of paragraph (f)(1) as follows:

§ 63.1012 Compressor standards.

* * * * *

(f) * * *

(1) Any compressor that is designated as described in § 63.1003(e) as operating with no detectable emissions shall operate at all times with an instrument reading of less than 500 parts per million. * * *

* * * * *

15. Section 63.1026 is amended by revising paragraph (e)(6) as follows:

§ 63.1026 Pumps in light liquid service standards.

* * * * *

(e) * * *

(6) *Unsafe-to-monitor pumps.* Any pump that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor pump is exempt from the requirements of paragraph (b) of this section, the monitoring and inspection requirements of paragraphs (e)(1)(v) through (viii) of this section, and the owner or operator shall monitor and inspect the pump according to the written plan specified in § 63.1022(c)(4).

16. Section 63.1029 is amended by revising the first sentence of paragraph (b)(1) as follows:

§ 63.1029 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service, and instrumentation systems standards.

* * * * *

(b) * * *

(1) *Monitoring method.* Unless otherwise specified in § 63.1021(b), § 63.1036, or § 63.1037, the owner or operator shall comply with paragraphs (b)(1) and (b)(2) of this section. * * *

* * * * *

17. Section 63.1100 is amended by revising the first sentence of paragraph (d)(4), introductory text, and revising paragraph (d)(4)(ii), introductory test, as follows:

§ 63.1100 Applicability.

* * * * *

(d) * * *

(4) The determination of the primary product for a process unit, including the assessment of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status report required by § 63.1110(a)(4) when the primary product is determined to be a product produced by a source category subject to requirements under this subpart. * * *

(ii) If the process unit is designed and operated as a flexible operation unit, the information specified in paragraphs (d)(4)(ii)(A) and (B) of this section, as appropriate.

* * * * *

18. Section 63.1101 is amended by revising the definition for *total resource effectiveness index value* as follows:

§ 63.1101 Definitions.

* * * * *

Total resource effectiveness index value or *TRE index value* means a measure of the supplemental total resource requirement per unit reduction of organic HAP associated with a process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equations given under § 63.1104(j).

* * * * *

19. Section 63.1103 is amended by revising entry 4 of table 2 of paragraph (b)(3)(i), revising entry 6 of table 5 of paragraph (d)(3), and revising table 6 of paragraph (d)(3) as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

* * * * *

TABLE 2. TO § 63.1103(b)(3)(i).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(i) OF THIS SECTION?

If you own or operate* * *	And if* * *	Then you must* * *
* *	* * *	* *
4. A fiber spinning line that is a new or reconstructed source.	The lines use a spin dope produced from either a suspension polymerization process or solution polymerization process,.	a. Reduce acrylonitrile emissions by 85 weight-percent or more. (For example, by enclosing the spinning and washing areas of the spinning line (as specified in paragraph (b)(4) of this section) and venting through a closed vent system and using any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a), of this part); or b. Reduce acrylonitrile emissions from the spinning line to less than or equal to 0.25 kilograms of acrylonitrile per megagram (0.5 pounds of acrylonitrile per ton) of acrylic and modacrylic fiber produced; or c. Reduce the AN concentration of the spin dope to less than 100 ppmw.
* *	* * *	* *

(d) * * * (3) * * *

Table 5.—To § 63.1103(d)—What Are My Requirements If I Own or Operate a Polycarbonate Production Existing Affected Source?

If you own or operate. . .	And if. . .	Then you must. . .
* *	* * *	* *
6. Equipment as defined under § 63.1101	The equipment contains or contacts weight-percent total organic HAPe, and operates ≤ 300 hours per year.	Comply with the requirements of subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.

* * * * *

TABLE 6.—TO § 63.1103(d)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION NEW AFFECTED SOURCE?

If you own or operate. . .	And if. . .	Then you must. . .
1. A storage vessel with: 38 cubic meters ≤capacity <151 cubic meters.	13.1 kilopascals ≤maximum true vapor pressure of total organic HAP <76.6 kilopascals.	a. Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), as specified in § 63.982(a)(1) (storage vessel requirements) of this part; or b. Comply with the requirements of subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. A storage vessel with: 151 cubic meters ≤capacity.	The maximum true vapor pressure of total organic HAP is ≥5.2 kilopascals.	Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(1) (storage vessel requirements) of this part.

TABLE 6.—TO § 63.1103(d)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION NEW AFFECTED SOURCE?—Continued

If you own or operate. . .	And if. . .	Then you must. . .
3. A storage vessel with: 38 cubic meters ≤capacity <151 cubic meters.	The maximum true vapor pressure of total organic HAP is ≥76.6 kilopascals.	Reduce emissions of total organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(1) (storage vessel requirements) of this part.
4. A process vent from continuous unit operations or a combined vent stream [a].	The vent stream has a a TRE[b,c] ≤9.6	a. Reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; and Vent emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994, of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per hourd, whichever is less stringent; or b. Reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994 (halogen reduction device requirements) of this part; and Reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; or c. Achieve and maintain a TRE index value greater than 9.6
5. Equipment as defined under § 63.1101	The equipment contains or contacts ≥ 5 weight-percent organic HAPe, and operates ≥ 300 hours per year.	Comply with the requirements of 40 CFR subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] Combined vent streams shall use the applicability determination procedures and methods for process vents from continuous unit operations (§ 63.1104).

[b] The TRE equation coefficients for halogenated streams (table 7 of this subpart) shall be used to calculate the TRE index value.

[c] The TRE is determined according to the procedures specified in § 63.1104(j). If a dryer is manifolded with such vents, and the vent is routed to a recovery, recapture, or combustion device, then the TRE index value for the vent must be calculated based on the properties of the vent stream (including the contributions of the dryer). If a dryer is manifolded with other vents and not routed to a recovery, recapture, or combustion device, then the TRE index value must be calculated excluding the contributions of the dryer. The TRE index value for the dryer must be calculated separately in this case.

[d] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).

[e] The weight-percent organic HAP is determined for equipment according to procedures specified in § 63.1107.

20. Section 63.1104 is amended by revising paragraphs (f) introductory text, and (j)(1) as follows:

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

* * * * *

(f) *Volumetric flow rate.* The process vent volumetric flow rate (Q_S), in standard cubic meters per minute at 20 °C, shall be determined as specified in paragraph (f)(1) or (2) of this section and shall be recorded as specified in § 63.1109(d).

* * * * *

(j) * * *

(1) *TRE index value equation.* The equation for calculating the TRE index value is Equation 5:

$$TRE = 1/E_{HAP}*[A+B(Q_S)+C(H_T)+D(E_{TOC})] \quad \text{[Eq. 5]}$$

Where:

TRE = TRE index value.

A, B, C, D = Coefficients presented in table 1 of this section.

E_{HAP} = Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (h) or (k) of this section.

Q_S = process vent flow rate, standard cubic meters per minute, at a standard temperature of 20 °C, as calculated according to paragraph (f) or (k) of this section.

H_T = process vent net heating value, megaJoules per standard cubic meter, as calculated according to paragraph (g) or (k) of this section.

E_{TOC} = Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (h) or (k) of this section.

* * * * *

21. Section 63.1108 is amended by revising the second sentence of paragraph (b)(1), and by revising the first sentence of paragraph (b)(2) as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

* * * * *

(b) * * *

(1) * * * For each excursion except for excused excursions (as described in § 63.998(b)(6)(ii)), and as provided for in paragraph (b)(2) of this section the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(2) *Parameter monitoring: Excursions.* An excursion is not a violation in cases where continuous monitoring is required and the excursion does not count toward the number of excused excursions (as described in § 63.998(b)(6)(ii)), if the conditions of paragraph (b)(2)(i) or (ii) of this section are met. * * *

* * * * *

22. Section 63.1110 is amended by revising paragraph (e)(2) as follows:

§ 63.1110 Reporting requirments.

* * * * *

(e) * * *

(2) *Due date.* The Periodic Report shall be submitted no later than 60 days after the end of each 6-month period. The first report shall cover the 6-month period after the Notification of Compliance Status report is due. The first report shall be submitted no later than the last day of the month that includes the date 8 months (6 months and 60 days) after the Notification of Compliance Status report is due.

* * * * *

[FR Doc. 99–30229 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300948; FRL–6391–8]

RIN 2070–AB78

Avermectin B1 and its delta-8,9-isomer; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for the combined residues of the insecticide and miticide avermectin B_1 and its delta-8,9-isomer in or on celeriac at 0.05 part per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2000. 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 celeriac. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act 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 the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective November 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300948, must be received by EPA on or before January 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300948 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300948. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents

that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 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 PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 19, 1997 (62 FR 44089) (FRL–5737–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of avermectin B_1 and its delta-8,9-isomer in or on celeriac at 0.05 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because 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 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment. In the **Federal Register** of August 7, 1998 (63 FR 42246) (FRL–6021–2), EPA extended the time-limited tolerance for the combined residues of avermectin B_1 and its delta-8,9-isomer in or on celeriac at 0.05 ppm, with an expiration date of January 31, 2000.

EPA received a request to extend the use of avermectin B_1 and its delta-8,9-isomer on celeriac for this year's growing season due to continued pest pressure from the two-spotted spider mite. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of avermectin B_1 and its delta-8,9-isomer on celeriac for control of the two-spotted spider mite in celeriac.

EPA assessed the potential risks presented by residues of avermectin B_1 and its delta-8,9-isomer in or on celeriac. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 19, 1997 (62 FR 44089) (FRL–5737–1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 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 celeriac after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. 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.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300948 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 21, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

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 the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources

and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300948, 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 or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a 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(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. 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) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); 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 or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the [tolerance/exemption] 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. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the General Accounting Office

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. 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 this final rule in the **Federal Register**. This final 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: November 9, 1999.

James Jones,

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.

§ 180.449 [Amended]

2. In § 180.449, by amending paragraph (b) in the table, for the commodity ''celeriac,'' by revising the date ''1/31/00'' to read ''12/31/00''.

[FR Doc. 99–30409 Filed 11–19–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300933; FRL–6385–5]

RIN 2070–AB78

Herbicide Safener HOE-107892; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for residues of the

herbicide safener HOE-107892 and its metabolites HOE-113225, HOE-109453, and HOE-094270 in or on barley grain at 0.05 part per million (ppm), barley hay at 0.5 ppm; barley straw at 0.1 ppm; and the processed by-products of barley grain: pearled barley at 1.0 ppm, bran at 0.4 ppm, and flour at 0.1 ppm; wheat grain a 0.01 ppm; and wheat straw at 0.05 ppm for an additional 23-month period. These tolerances will expire and be revoked on December 31, 2001. 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 wheat and barley. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act 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 the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective November 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300933, must be received by EPA on or before January 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300933 in the subject line on the first page of your response.

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; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300933. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 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 PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued final rules, published in the **Federal Registers** of May 6, 1998 (63 FR 24939) (FRL–5788–1), for wheat and its associated commodities and September 9, 1998 (63 FR 48116) (FRL–6024–7), for barley and its associated commodities which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it extended time-limited tolerances for the residues of herbicide safener HOE-107892 and its metabolites HOE-113225, HOE-109453, and HOE-094270 on wheat grain a 0.01 ppm; and wheat straw at 0.05 ppm with an expiration date of February 1, 2000 (63 FR 24939) and residues of herbicide safener HOE-107892 and its metabolites HOE-113225, HOE-109453, and HOE-094270 barley grain at 0.05 part per million (ppm), barley hay at 0.5 ppm; barley straw at 0.1 ppm; and the processed by-products of barley grain: pearled barley at 1.0 ppm, bran at 0.4 ppm, and flour at 0.1 ppm with an expiration date of February 1, 2000 (63 FR 48116). EPA established the tolerances because 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 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA assessed the potential risks presented by residues of HOE-107892 in or on wheat and barley and their associated commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the most recent final rule of September 9, 1998. Based on those data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 23-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these

tolerances will expire and be revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wheat, barley, and their associated commodities after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300933 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 21, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

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 the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300933, 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 or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a 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(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends time-limited tolerances under FFDCA section 408. 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) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); 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 or any Agency action under Executive Order 13045, entitled *Protection of Children*

from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). 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), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances 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. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the General Accounting Office

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. 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 this final rule in the **Federal Register**. This final 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: November 4, 1999.

James Jones,

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.

§ 180.509 [Amended]

2. In § 180.509, by amending paragraph (b) by revising the date for ''barley, bran; barley, flour; barley, grain; barley, hay; barley, pearled; barley, straw; wheat, grain; and wheat, straw'' from ''2/1/00'' to read ''12/31/01''.

[FR Doc. 99–30410 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300949; FRL–6392–9]

RIN 2070–AB78

Paraquat; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of paraquat (1,1′-di-methyl-4,4′-bipyridinium-ion) in or on artichokes. 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 artichokes. This regulation establishes a maximum permissible level for residues of paraquat in this food commodity. The tolerance will expire and is revoked on December 31, 2000.

DATES: This regulation is effective November 22, 1999. Objections and requests for hearings, identified by docket control number OPP–300949, must be received by EPA on or before January 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300949 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number:(703) 308-9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under

the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300949. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 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 PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide paraquat, in or on artichokes at 0.05 part per million (ppm). This tolerance will expire and is revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

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. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

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 the Federal Insecticide, Fungicide, and Rodenticide Act (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 the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Paraquat on Artichokes and FFDCA Tolerances

Simazine has been used in the past to control common chickweed, mustard, Bermuda buttercup, certain grasses and older weeds in artichokes. With the imminent cancellation of simazine on artichokes, the industry purchased all existing stocks. However, growers are expected to deplete the existing stocks of simazine, labeled for artichokes by September of 1999. EPA has authorized under FIFRA section 18 the use of paraquat on artichokes for control of weeds in California. 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 paraquat in or on artichokes. 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 as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 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 artichokes after that date will not be unlawful, provided the pesticide is applied 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 paraquat meets EPA's registration requirements for use on artichokes 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 paraquat 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 California 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 paraquat , contact the Agency's Registration Division at the address provided under ''FOR FURTHER INFORMATION CONTACT.''

IV. 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 paraquat and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of paraquat on artichokes at 0.05 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 paraquat are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* An acute reference dose (acute RfD) of 0.03 milligrams per kilogram per day (mg/kg/day) has been identified for females 13+ years old and the general population including infants and children. For females 13+ the acute RfD is based on the maternal no observable adverse effects level (NOAEL) of 3 milligrams/kilogram/day (mg/kg/day) derived from the combined results of two developmental studies in rats. The effects of concern are delayed ossification of the forelimb and hindlimb digits. The maternal NOAEL of 3 mg/kg/day has also been identified as the endpoint of concern for the acute RfD for the general population including infants and children. The effects of concern are based on clinical signs of toxicity, decreased body weight gain, and respiratory distress and histopatholgy of the lungs An uncertainty factor (UF) of 100 (10x for inter-species extrapolation and 10x for intra-species variability) is appropriate. The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children as required by FFDCA section 408 (b)(2)(C) was reduced to 1x for acute exposures. The acute Population Adjusted Dose (aPAD) is a modification of the acute RfD to accommodate the FQPA Safety Factor. The aPAD is equal to the acute RfD divided by the FQPA Safety Factor. Therefore, for females 13+ years old and the general population including infants and children the dietary aPAD is 0.03 mg/kg/day.

2. *Short- and intermediate-term toxicity.* The NOAEL of 3.0 mg/kg/day derived from the combined results of two developmental studies in rats was identified as the short- and intermediate-term endpoints for dermal exposures. At lowest observable adverse effects level (LOAEL) of 5.0 mg/kg/day, there were clinical signs of toxicity, decreased body weight gain, and lung histopathology. A 0.3% dermal absorption rate should be used in risk assessments.

3. *Chronic toxicity.* EPA has established the chronic RfD for paraquat at 0.0045 mg/kg/day. The chronic RfD is based on the NOAEL of 0.45 mg/kg/day from a one year oral study in dogs. At the LOAEL of 0.93 mg/kg/day the effects were chronic pneumonitd. An UF of 100 (10x for inter-species extrapolation and 10x for intra-species variability is appropriate. The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children as required by FFDCA section 408 (b)(2)(C) is not applicable because the endpoint used in deriving the chronic RfD is based on chronic pneumonitd (not developmental or neurotoxic effects) in adult dogs after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children. The chronic Population Adjusted Dose (cPAD) is a modification of the chronic RfD to accommodate the FQPA Safety Factor. The cPAD is equal to the chronic RfD divided by the FQPA Safety Factor. Hence for chronic exposures, the cPAD and chronic RfD are the same (0.0045 mg/kg/day).

4. *Carcinogenicity.* Paraquat is classified as Group E (no evidence of carcinogenicity in humans).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.205) for the residues of paraquat, in or on a variety of raw agricultural commodities. Tolerances have also been established for fat, kidney, meat, and meat byproducts for cattle, goats, hogs, horses, poultry and sheep as well as tolerances for eggs and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from paraquat 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 one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. At the 95th percentile exposure level, assuming 100 percent crop treated and tolerance level residues for all commodities, 13 percent of the aPAD was utilized for the U.S. Population and 23 percent of the aPAD was utilized for children (1-6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of paraquat is below the Agency's level of concern.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-91 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. Assuming tolerance level residues for all commodities and 100 percent crop treated values, 31 percent of the cPAD was utilized for the U.S. Population and 69 percent of the cPAD was utilized for children (1-6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the chronic dietary risk associated with existing uses and the proposed use of paraquat is below the Agency's level of concern.

2. *From drinking water.* Paraquat dichloride binds strongly to soil clay particles and it did not leach from the surface in terrestrial field dissipation studies. There were, however, detections of paraquat in drinking water wells from two states cited in the Pesticides in Ground Water Database (1991). These detections are not considered to be representative of normal paraquat use. Therefore, paraquat is not expected to be a groundwater contaminant or concern based on normal use patterns.

Due to its persistent nature, paraquat could potentially be found in surface water systems associated with soil particles carried by erosion, however, paraquat is immobile in most soils, and at very high application rates (50-1000X), there was no desorption of paraquat from soils. Therefore, based on paraquat's normal use patterns and unique environmental fate characteristics, exposures to paraquat in drinking water are not expected to be obtained from surface water sources.

3. *From non-dietary exposure.* Paraquat is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure from the use of paraquat.

4. *Cumulative exposure to substances with a 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 paraquat 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, paraquat 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 paraquat 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.* Acute aggregate exposure takes into account acute dietary food and water exposures plus other indoor and outdoor non-occupational exposure. Since paraquat is not registered on any use sites which would result in non-dietary, non-occupational exposure and exposure to ground or surface water is not expected, the only non-occupational exposure to paraquat is expected through consumption of food. Therefore acute aggregate risk to paraquat is assumed to be the same as estimated risk from food and feed uses: at the 95th percentile exposure level, assuming 100 percent crop treated and tolerance level residues for all commodities, 13 percent of the aPAD was utilized for the U.S. Population.

2. *Chronic risk.* Chronic-term aggregate exposure takes into account chronic dietary food and water plus other indoor and outdoor non-occupational exposure. Since there are no non-dietary, non-occupational exposures expected from the use of this chemical and paraquat is not expected to reach ground or surface water, the only non-occupational exposure to paraquat is anticipated through consumption of food. Therefore chronic aggregate risk to paraquat is expected be the same as the estimated risk from food and feed uses: assuming tolerance level residues for all commodities and 100 percent crop treated values, 31 percent of the cPAD was utilized for the U.S. Population.

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. Paraquat is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore no short- and intermediate-term aggregate risk assessments are needed.

4. *Aggregate cancer risk for U.S. population.* Paraquat is classified as Group E (no evidence of carcinogenicity in humans).

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 paraquat 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 paraquat, EPA considered data from developmental toxicity studies in the rat and mice 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 prenatal and postnatal toxicity and the completeness of the data base 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 interspecies and intraspecies 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 a developmental study in rats, the maternal NOAEL is 8 mg/kg/day (HDT). No LOAEL was identified and there were no maternal or developmental effects observed in the study.

In another developmental study in rats, the maternal NOAEL is 1 mg/kg/day based on thin and hunched appearance, decreased body weight gain, and histological changes in the lungs and kidneys of non-survivors at 5 mg/kg/day (LOAEL). The developmental NOAEL is 1 mg/kg/day based on delayed ossification in the fore- and hindlimb digits at 5 mg/kg/day (LOAEL). (The overall maternal and developmental NOAEL for the rat is considered 3 mg/kg/day based on the results from two developmental studies.)

In a developmental study in mice, the maternal NOAEL is 5 mg/kg/day based on statistically significant decreases in body weight gain at 10 mg/kg/day (LOAEL). The developmental NOAEL is 5 mg/kg/day based on statistically significant decreases in body weight gain at 10 mg/kg/day (LOAEL).

In another developmental study in mice, the maternal NOAEL is 15 mg/kg/day based clinical signs, death, decreased body weight gain, decreased body weight, increased organ weight (lung w/ trachea, kidney), dark red lung lobes, and possible decrease in pregnancy rate at 25 mg/kg/day (LOAEL). The developmental NOAEL is 15 mg/kg/day based on decreased mean fetal weight, retarded ossification of occipital, increased number with extra 14th ribs, increased number with unossified astragalus in the hindlimb, and an increased number with ≤ 6 caudal centra.

iii. *Reproductive toxicity study.* In a 2-generation reproductive study in rats, the NOAEL for paternal toxicity is 1.25 mg/kg/day based on increased incidence of alveolar histiocytes, discolored lungs, fibrosis, edema at the LOAEL of 3.75 mg/kg/day. There were no reproductive effects seen in this study therefore, the reproductive NOAEL/LOAEL is 7.5 mg/kg/day (HDT).

iv. *Prenatal and postnatal sensitivity.* The Agency has determined that there is no indication of additional sensitivity to young rats or mice following pre-and/or postnatal exposure to paraquat.

v. *Conclusion.* There is a complete toxicity data base for paraquat and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Data provided no indication of increased sensitivity of rats or mice to *in utero* and/or postnatal exposure to paraquat. Based on this, EPA concludes that reliable data support the use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* Acute aggregate exposure takes into account acute dietary food and water exposures plus other indoor and outdoor non-occupational exposures. Since paraquat is not registered on any use sites which would result in non-dietary, non-

occupational exposure and is not expected in ground or surface water, the only non-occupational exposure to paraquat is expected through consumption of food. Therefore acute aggregate risk to paraquat is assumed to be the same as estimated risk from food and feed uses; at the 95th percentile exposure level, assuming 100 percent crop treated and tolerance level residues for all commodities, 23 percent of the aPAD was utilized for utilized for children, 1-6 years old, the major identifiable subgroup with the highest aggregate exposure.

3. *Chronic risk*. Chronic-term aggregate exposure takes into account chronic dietary food and water plus other indoor and outdoor non-occupational exposure. Since there are no non-dietary, non-occupational exposures expected from the use of this chemical and paraquat is not expected to reach ground or surface water, the only non- occupational exposure to paraquat is expected through consumption of food. Therefore chronic aggregate risk to paraquat is assumed to be the same as the estimated risk from food and feed uses; assuming tolerance level residues for all commodities and 100 percent crop treated values, 69 percent of the cPAD was utilized for children, 1-6 years old, the major identifiable subgroup with the highest aggregate exposure.

4. *Short- or 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. Paraquat is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore no short- and intermediate-term aggregate risk assessments are needed.

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 paraquat residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants and animals has is understood. The residue of concern is the parent compound, paraquat, only, as specified in 40 CFR 180.205.

B. Analytical Enforcement Methodology

Method I of PAM, Vol. II (spectrophotometric), is adequate for tolerance enforcement purposes. In addition, the Agency concluded that Method 1B adequately recovers paraquat cation residues from samples of potatoes and soybeans treated with radiolabeled paraquat.

C. Magnitude of Residues

Residues of paraquat are not expected to exceed 0.05 ppm in/on artichokes as a result of this section 18. No animal feed items are associated with the proposed use.

D. International Residue Limits

No CODEX, Canadian, and/or Mexican MRLs/tolerances have been established for residues of paraquat on artichoke. Therefore, there are no issues of international harmonization associated with this action.

E. Rotational Crop Restrictions

Artichokes are a perennial crop and are not normally rotated; therefore, a discussion of rotational crop requirements is not germane to this petition.

VI. Conclusion

Therefore, the tolerance is established for residues of paraquat in artichokes at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300949 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 21, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

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 the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP-300949, 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 or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a 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(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. 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) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); 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 or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, 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. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the General Accounting Office

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. 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 this final rule in the **Federal Register**. This final 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: November 4, 1999.

James Jones,

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. In § 180.205, the table to paragraph (b) is amended by adding alphabetically an entry for ''artichokes'' to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

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Commodity	Parts per million	Expiration/revocation date
* *	* * *	
Artichokes	0.05	12/31/00
* *	* * *	

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[FR Doc. 99–30411 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6476–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Materials Technology Laboratory (MTL)—Watertown Arsenal Development Corporation Parcel and Commander's Quarters parcel (also known as Zones 1–4) from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region I announces the partial deletion of the Materials Technology Laboratory—Watertown Arsenal Development Corporation Parcel and Commander's Quarters parcel (jointly known as Zones 1–4) from the National Priorities List (NPL). Zones 1 through 4 of MTL include a portion of Operable Unit (OU) No. 1 and OU No. 3. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act. After consultation with the Commonwealth of Massachusetts, EPA has determined that all appropriate actions under CERCLA have been implemented. Moreover, EPA and the Commonwealth have determined that remedial activities conducted to date at OU No. 1 (Zones 1 through 4) and OU No. 3 have been protective of human health, welfare and the environment. Institutional controls, which have been established as part of the remedy, will ensure continued protectiveness in the future. Institutional controls are provided for in a Grant of Environmental Restriction and Easement. The Charles River Park parcel and the Charles River Operable Unit, are still undergoing investigation/remedial actions and are not to be removed from the NPL at this time.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Meghan Cassidy, Remedial Project Manager, U.S. EPA Region I , 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918–1387.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is: Watertown Arsenal Development Corporation Parcel and Commander's Quarters parcel (also known as Zones 1–4) of the Materials Technology Laboratory (MTL) in Watertown, Massachusetts.

A Notice of Intent to Delete for these parcels at this site was published on August 16, 1999, 64 FR 44454. The closing date for comments on the Notice of Intent to Delete was September 15, 1999. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site (or portion thereof) deleted from the NPL are eligible for further remedial actions should future conditions warrant such action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 8, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

2. Table 2 of Appendix B to Part 300 is amended by revising the entry for ''Materials Technology Laboratory (USARMY)'', Watertown, Massachusetts to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABLE 2.—FEDERAL FACILITIES SECTION

St	Site name	City/county	Notes(a)
*	* * *	* * *	*
MA	Materials Technology Laboratory (USARMY)	Watertown	P
*	* * *	* * *	*

(a) * * *
P = Sites with partial deletion(s).

[FR Doc. 99–30155 Filed 11–19–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 52b

RIN 0925–AA04

National Institutes of Health Construction Grants

AGENCY: National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is revising regulations governing National Cancer Institute construction grants for the purpose of making them applicable to all NIH financial assistance programs with construction grant authority, including programs transferred to NIH by the ADAMHA Reorganization Act and two programs authorized by the National Institutes of Health Revitalization Act of 1993. The regulations are also being revised to update statutory references in the regulations, add new administrative and technical requirements for the awarding of these grants, and add procedures for the recovery of grant funds for facilities no longer used for biomedical research purposes.

DATES: This final rule is effective on December 22, 1999. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register, effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, or telephone 301–496–4607 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Under the Public Health Service (PHS) Act, as amended (42 U.S.C. 201 *et seq.*), construction or modernization grant authority exists in sections 413(b)(6)(B) and 414(b) for the National Cancer Institute (construction grants); sections 421(b)(2)(B) and 422(c)(3) for the National Heart, Lung, and Blood Institute (construction grants); section 441(a) for the National Institute of Arthritis and Musculoskeletal and Skin Diseases (modernization grants); section 455 for the National Eye Institute (construction grants); section 464C(a) for the National Institute on Deafness and Other Communication Disorders (modernization grants); section 464P(b)(3) for the National Institute on Drug Abuse (construction grants); section 481A(a) for the Director of NIH, acting through the Director of the National Center for Research Resources (construction and modernization grants); section 481B(a) for the Director of NIH (construction grants); and section 2354(a)(5)(B) for NIH AIDS research programs (construction grants).

NIH is revising the existing regulations at 42 CFR part 52b (National Cancer Institute Construction Grants) to make them applicable to all NIH financial assistance programs with construction or modernization grant authority, except for certain alterations and improvements under research project grants and center grants, and to make other changes. NIH announced proposed revisions to the existing regulations at 42 CFR part 52b (National Cancer Institute Construction Grants) in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on July 6, 1995 (60 FR 35266). One comment was received and it supported the proposed changes. With the exception of minor editorial and the following changes, the regulations are the same as those proposed in the NPRM.

In lieu of specifically listing in § 52b.1, the applicability section, each NIH construction grant program to which the regulations apply, as proposed in the NPRM, the section has been revised and simplified to apply across-the-board to all NIH construction grant programs, except for those few programs specifically excluded by the section. This will have the advantage of assuring that any new NIH construction grant programs enacted by Congress will have implementing regulations without the necessity of having to amend the regulations. The final rule authorizes the Director of NIH to publish a list from time to time of the construction grant programs covered by the regulations. This list would be for informational purposes only and would not restrict the applicability of the regulations.

Part 52b is retitled and the authority citation is amended to add the construction and modernization grant authorities. Sections 52b.2 through 52b.5 are revised in their entirety. Although the current National Cancer Institute (NCI) construction grants regulations do not specify a specific length of time the grantee must use a facility for the purpose for which constructed, § 52b.10(a) of the current regulations requires the applicant to have sufficient title to assure ''for the estimated useful life of the facility,'' as determined by the Director, NCI, undisturbed use and possession for the purpose of the construction and operation of the facility. The regulations governing the administration of grants, 45 CFR part 74, which are incorporated in the current part 52b, provide that the recipient shall use the real property ''for the authorized purpose of the project as long as it is needed'' (§ 74.32(a)). The revised regulations continue to specify continued use of the facility for its originally authorized purpose so long as needed, unless another period is prescribed by statute (e.g., 20 years after completion of construction prescribed by section 481A(c)(1)(B) of the PHS Act for biomedical and behavioral research facilities).

The NPRM continued without change the provisions relating to title (sufficient for the estimated useful life as determined by the awarding component director) and incorporation of 45 CFR part 74 (use for the originally authorized purpose so long as needed), but added express provisions authorizing alternate use in appropriate circumstances and the right of the Federal Government to recover in the event a facility is sold or transferred to an ineligible third party or diverted to an unauthorized purpose, prior to the expiration of its useful life. Those provisions remain in this final rule with minor modifications to conform more closely to the pertinent provisions of 45 CFR part 74.

Sections 52b.6, 52b.7, 52b.8, 52b.9, 52b.10, and 52b.11 are revised and redesignated as indicated on the following chart, which shows the new section designations of all the sections of former part 52b:

Former section	New section
52b.1	52b.1
52b.2	52b.2
52b.3	52b.3
52b.4	52b.4
52b.5	52b.5
52b.6	52b.14
52b.7	52b.6
52b.8	52b.10
52b.9	52b.11
52b.10	52b.13
52b.11	52b.12
None	52b.7
None	52b.8
None	52b.9

Three new sections are added to part 52b. A new § 52b.7 is added specifying facility usage requirements; a new § 52b.8 is added concerning NIH monitoring of the usage of biomedical research facilities constructed with federal funds; and a new § 52b.9 is added concerning procedures to recover federal funds for facilities that cease to be used for biomedical research purposes. Section 52b.10 adds new

requirements relating to the recording of the Notice of Federal Interest and the purchasing of insurance.

The introductory paragraph of § 52b.11, as proposed in the NPRM, is revised for editorial purposes. Sections 52b.12 and 52b.14, as proposed in the NPRM, are revised to (1) include additional information concerning where copies of the standards that are incorporated by reference may be inspected and obtained, (2) comply with **Federal Register** format requirements for the references, and (3) consolidate the published standards that are incorporated by reference in § 52b.12 and the other laws, regulations, executive orders, and policies referenced in § 52b.14. Additionally, the heading of § 52b.14 is revised to include public laws and executive orders.

These construction grant regulations do not apply to minor alterations and renovations under research project grants. Minor alterations and renovations are covered under the regulations at 42 CFR part 52 governing the award of research project grants. These regulations also do not cover alterations and renovations under NIH center grants. Those alterations and renovations are covered under the regulations for that program at 42 CFR part 52a.

HHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and title X, part C of Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

The following statements are provided for the information of the public.

Executive Order 12866

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in section 3(f) of the Order, prepublication review by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), is necessary. This rule was reviewed under Executive Order 12866 and was deemed not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. The Secretary of Health and Human Services certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act, is not required. The rule codifies in the CFR policies and procedures of the Federal Government which are used by the NIH to administer construction grants awarded under the authority set forth in sections 413(b)(6)(B), 414(b), 421(b)(2)(B), 422(c)(3), 441(a), 455, 464C(a), 464P(b)(3), 481A(a), 481B(a), and 2354(a)(5)(B) of the PHS Act and updates the current regulations. These grants do not have significant economic or policy impact on a broad cross-section of the public. Furthermore, the revised regulations only affect the limited number of public or private nonprofit agencies or institutions which are interested in participating in the construction grant programs. No agency or institution is required to participate in these programs. Apart from the requirements for applicants and award recipients necessary to operate these programs, the revised regulations include no standards or requirements which burden small entities.

Paperwork Reduction Act

Sections 52b.9(b), 52b.10(f), 52b.10(g), and 52b.11(b) of this rule contain information collection requirements which are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Section 52b.10(g) also contains recordkeeping requirements which are subject to OMB approval under the Paperwork Reduction Act. The information collection language in §§ 52b.9(b), 52b.10(f), 52b.10(g), and 52b.11(b), and the recordkeeping language in § 52b.10(g) is approved under OMB Control Number 0925–0424 (expires November 30, 2001).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by these proposed regulations are:

93.392—Cancer Construction

93.131—Shared Research Facilities for Heart, Lung, and Blood Diseases

93.846—Arthritis, Musculoskeletal and Skin Diseases Research

List of Subjects in 42 CFR Part 52b

Grant programs—health, Health facilities, Incorporation by reference, Medical research, Reporting and recordkeeping requirements.

Dated: August 29, 1999.

Harold Varmus,

Director, National Institutes of Health.

For the reasons set out in the preamble, part 52b of title 42 of the Code of Federal Regulations is revised to read as follows:

PART 52b—NATIONAL INSTITUTES OF HEALTH CONSTRUCTION GRANTS

Sec.

52b.1 To what programs do these regulations apply?
52b.2 Definitions.
52b.3 Who is eligible to apply?
52b.4 How to apply.
52b.5 How will NIH evaluate applications?
52b.6 What is the rate of federal financial participation?
52b.7 How is the grantee obligated to use the facility?
52b.8 How will NIH monitor the use of facilities constructed with federal funds?
52b.9 What is the right of the United States to recover federal funds when facilities are not used for research or are transferred?
52b.10 What are the terms and conditions of awards?
52b.11 What are the requirements for acquisition and modernization of existing facilities?
52b.12 What are the minimum requirements of construction and equipment?
52b.13 Additional conditions.
52b.14 Other federal laws, regulations, executive orders, and policies that apply.

Authority: 42 U.S.C. 216, 285a-2, 285a-3, 285b-3, 285b-4, 285d-6, 285i, 285m-3, 285o-4, 287a-2, 287a-3, 300cc-41.

§ 52b.1 To what programs do these regulations apply?

(a) *General.* Except as provided in paragraph (c) of this section, this part applies to all grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the building (or applicable part of the building) suitable for the purpose for which it was constructed.

(b) *Specific programs covered.* From time to time the Director may publish a list of the construction grant programs covered by this part. The list is for informational purposes only and is not intended to restrict the statement of applicability in paragraph (a) of this section. In addition, information on particular construction grant programs,

including applications and instructions, may be obtained from the component of NIH that administers the program.

(c) *Specific programs excluded.* The regulations of this part do not apply to minor alterations, renovations, or repairs funded under a research project grant (see part 52 of this chapter) or alterations or renovations funded under an NIH center grant (see part 52a of this chapter).

§ 52b.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Construction means the construction of new buildings or the modernization of, or the completion of shell space in, existing buildings (including the installation of fixed equipment), but excluding the cost of land acquisition and off-site improvements.

Construction grant means funds awarded for construction in accordance with the applicable provisions of the Act and this part.

Director means the Director of NIH or the director of an NIH national research institute, center, or other component of NIH, authorized to award grants for construction under the applicable provisions of the Act, and any official to whom the authority involved is delegated.

Federal share with respect to any construction project means the proportion, expressed as a percentage, of the cost of a project to be paid by a grant award under the Act.

HHS, DHHS, and *Department* mean the Department of Health and Human Services.

Institute means any national research institute, center, or other agency of the National Institutes of Health.

Modernization means the alteration, renovation, remodeling, improvement, expansion, and/or repair of existing buildings and the provision of equipment necessary to make the building suitable for use for the purposes of the particular program.

NIH means the National Institutes of Health and its organizational components that award construction grants.

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Project means the particular construction activity which is supported by a grant under this part.

Secretary means the Secretary of Health and Human Services and any official to whom the authority involved is delegated.

§ 52b.3 Who is eligible to apply?

In order to be eligible for a construction grant under this part, the applicant must:

(a) Be a public or private nonprofit agency or institution;

(b) Be located in a state, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor states of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); and

(c) Meet any additional eligibility criteria specified in the applicable provisions of the Act.

§ 52b.4 How to apply.

Applications for construction grants under this part shall be made at the times and in the form and manner as the Secretary may prescribe.

§ 52b.5 How will NIH evaluate applications?

(a) In evaluating and approving applications for construction grants under this part, the Director shall take into account, among other pertinent factors, the following:

(1) The priority score assigned to the application by an NIH peer review group as described in paragraph (b) of this section;

(2) The relevance of the project for which construction is proposed to the objectives and priorities of the particular program authorized by the Act;

(3) The scientific merit of the research activities that will be carried out in the proposed facility;

(4) The scientific or professional standing or reputation of the applicant and of its existing or proposed officers and research staff;

(5) The availability, by affiliation or other association, of other scientific or health personnel and facilities to the extent necessary to carry out effectively the program proposed for the facility, including the adequacy of an acceptable biohazard control and containment program when warranted;

(6) The need for the facility and its total effects on similar or related facilities in the locale, and the need for appropriate geographic distribution of similar facilities; and

(7) The financial need of the applicant.

(b) The priority score of the application shall be based, among other pertinent factors, on the following criteria:

(1) The scientific merit of the total program and its component parts to be carried out in the facility;

(2) The administrative and leadership capabilities of the applicant's officers and staff;

(3) The organization of the applicant's research program and its relationship with the applicant's overall research programs;

(4) The anticipated effect of the project on other relevant research programs and facilities in the geographic area, and nationwide;

(5) The need for the project or additional space; and

(6) The project cost and design.

§ 52b.6 What is the rate of federal financial participation?

(a) Unless otherwise specified by statute, the rate of federal financial participation in a construction project supported by a grant under this part shall not be more than 50 percent of the necessary allowable costs of construction as determined by the Director, except that when the Director finds good cause for waiving this limitation, the amount of the construction grant may be more than 50 percent of the necessary allowable costs of construction.

(b) Subject to paragraph (a) of this section, the Director shall set the actual rate of federal financial participation in the necessary allowable costs of construction, taking into consideration the most effective use of available federal funds to further the purposes of the applicable provisions of the Act.

§ 52b.7 How is the grantee obligated to use the facility?

(a) The grantee shall use the facility (or that portion of the facility supported by a grant under this part) for its originally authorized purpose so long as needed for that purpose, or other period prescribed by statute, unless the grantee obtains advance approval from the Director, in the form and manner as the Director may prescribe, to use the facility for another purpose. Use for other purposes shall be limited as prescribed in § 52b.9(c)(2).

(b) The Director, in determining whether to approve an alternative use of the facility, shall take into consideration the extent to which:

(1) The facility will be used by the grantee or other owner for a purpose described in § 52b.9(c)(2); or

(2) There are reasonable assurances that alternative facilities not previously used for NIH supported research will be utilized to carry out the original purpose as prescribed in § 52b.9(c)(1).

(c) *Sale or transfer.* In the form and manner as the Director may prescribe,

the grantee may request the Director's approval to sell the facility or transfer title to a third party eligible under § 52b.3 for continued use of the facility for an authorized purpose in accordance with paragraphs (a) and (b) of this section. If approval is permissible under the Act or other federal statute and is granted, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in 45 CFR part 74, the regulations of this part, and the other terms and conditions of the grant.

§ 52b.8 How will NIH monitor the use of facilities constructed with federal funds?

NIH may monitor the use of each facility constructed with funds awarded under this part to ensure its continued use for the originally authorized research purpose, by means of reviewing periodic facility use certifications or reports, site visits, and other appropriate means.

§ 52b.9 What is the right of the United States to recover Federal funds when facilities are not used for research or are transferred?

(a) If the grantee plans to cease using the facility for the particular biomedical research or training purposes for which it was constructed as required by § 52b.7 (or alternate use authorized under § 52b.7(a) or paragraph (c) of this section), or the grantee decides to sell or transfer title to an entity ineligible for a grant under § 52b.3, the grantee shall request disposition instructions from NIH in the form and manner as the Director may prescribe. Those instructions shall provide for one of the following alternatives:

(1) The facility may be sold and the grantee or transferee shall pay to the United States an amount computed by multiplying the federal share of the facility times the proceeds from the sale (after deducting the actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). The sales procedures must provide for competition to the extent practicable, and be designed to provide the highest possible return;

(2) The grantee may retain title and shall pay to the United States an amount computed by multiplying the current fair market value of the facility by the federal share of the facility; or

(3) The grantee shall transfer the title to either the United States or to an eligible non-federal party approved by the Director. The grantee shall be entitled to be paid an amount computed by multiplying the current fair market value of the facility by the nonfederal share of the facility.

(b) The grantee or transferor of a facility which is sold or transferred, or the owner of a facility the use of which has changed, as described in paragraph (a) of this section, shall report that action in writing to the Director not later than 10 days from the date on which the sale, transfer, or change occurs, in the form and manner as the Director may prescribe.

(c) In lieu of disposition of a facility pursuant to the provisions of paragraph (a) of this section, the Director may, for good cause, supported by assurances provided by the grantee or transferee, approve one of the following alternatives:

(1) Transfer of the remaining usage obligation to facilities of substantially comparable or greater value or utility, to carry out the biomedical research or training purpose for which the grant was awarded. In this event, the remaining usage obligation shall be released from the original facility constructed with grant funds and transferred to the new facility, and the grantee shall remain subject to all other requirements imposed under this part with respect to the new facility; or

(2) Use the facility for as long as needed, in order of priority, for one of the following purposes:

(i) For other health related activities consistent with the purposes of one or more of the activities of the awarding institute as authorized under title IV or other provisions of the Act;

(ii) To provide training and instruction in the health fields for health professionals or health related information programs for the public; or

(iii) Other health related purposes consistent with one or more of the purposes authorized under the Act.

(d) The right of recovery of the United States set forth in paragraph (a) of this section shall not, prior to judgment, constitute a lien on any facility supported in whole or in part by a federal grant, including a construction grant under this part.

(e) Any amount required to be paid to the United States under this section will be paid to the awarding institute for disposition as required by law.

(Approved by the Office of Management and Budget under Control Number 0925–0424; expires November 30, 2001)

§ 52b.10 What are the terms and conditions of awards?

In addition to any other requirement imposed by law or determined by the Director to be reasonably necessary to fulfill the purposes of the grant, each construction grant shall be subject to the terms and conditions and the grantee assurances required by this section, supported by such documentation as the Director may reasonably require. The Director may, by general policy or for good cause shown by an applicant, approve exceptions to these terms and conditions or assurances where the Director finds that the exceptions are consistent with the applicable provisions of the Act and the purposes of the particular program:

(a) *Title.* The applicant must have a fee simple or other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for the estimated useful life of the facility, as determined by the Director, undisturbed use and possession for the purpose of the construction and operation of the facility.

(b) *Plans and specifications.* Approval by the Director of the final working drawings, specifications, and cost estimates must be obtained before the project is advertised or placed on the market for bidding. The approval must include a determination by the Director that the final plans and specifications conform to the minimum standards of construction and equipment as set forth in § 52b.12.

(c) *Relocation assistance.* An applicant with an approved project which involves the displacement of persons or businesses shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) and the applicable regulations issued under that Act (45 CFR part 15; 49 CFR part 24).

(d) *Approval of changes in estimated cost.* Unless approved by the Director, the applicant shall not enter into any construction contracts for the project or a part of the project, the cost of which exceeds the estimated cost approved in the terms of an award for that portion of the work covered by the plans and specifications. Exceptions shall be requested in the form and manner as the Director may prescribe.

(e) *Completion responsibility.* The applicant must construct the project, or cause it to be constructed, to final completion in accordance with the grant application, the terms and conditions of the award, and the approved plans and specifications.

(f) *Construction schedule inspection.* Prior to the start of construction, the grantee shall submit an approved copy of the construction schedule (critical path method) to the Director in the form and manner as the Director may prescribe.

(g) *Construction management.* The applicant must provide and maintain competent and adequate construction

management services for inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications. Construction management services shall include daily construction logs and monthly status reports which shall be maintained at the job site and shall be submitted to the Director at the times and in the form and manner as the Director may prescribe.

(h) *Nonfederal share.* Sufficient funds must be available to meet the nonfederal share of the costs of constructing the facility.

(i) *Funds for operation.* Sufficient funds must be available when construction is completed for effective use of the facility for the purposes for which it is being constructed.

(j) *Inspection.* The Director and the Director's representatives shall have access at all reasonable times to all work areas and documents during any stage of construction and the contractor shall provide proper facilities for this access and inspection.

(k) *Accessibility to handicapped persons.* The facility must be designed to comply with the Uniform Federal Accessibility Standards (41 CFR part 101–19, subpart 101–19.6, Appendix A), as modified by other standards prescribed by the Director or the Administrator of General Services. The applicant shall conduct inspections to ensure compliance with these specifications by the contractor.

(l) *Notice of Federal Interest.* The grantee shall record a Notice of Federal Interest in the appropriate official land records of the jurisdiction in which the property is located.

(m) *Title insurance.* The grantee shall purchase a title insurance policy unless a legal opinion has been provided which certifies that the grantee institution has fee simple title to the site free and clear of all liens, easements, rights-of-way, and any other adverse interests which would encumber the project. The Director may waive this requirement upon a request from the grantee adequately documenting self-insurance against the risks involved and containing such other information as the Director may prescribe.

(n) *Physical destruction insurance.* At the time construction is completed or at the time of beneficial occupancy, whichever comes first, the grantee shall purchase an insurance policy which insures the facility for the full appraised value of the property using state certified appraisers. The insurance policy must protect the property from total and partial physical destruction. The insurance policy must be maintained throughout the period of federal interest. The Director may waive this requirement upon a written request from the grantee adequately documenting self-insurance against the risks involved and containing such other information as the Director may prescribe.

(Approved by the Office of Management and Budget under Control Number 0925–0424; expires November 30, 2001)

§ 52b.11 What are the requirements for acquisition and modernization of existing facilities?

Grant awards for the acquisition and modernization of existing facilities are permitted if authorized by the statutes authorizing the construction grant program and shall be subject to the requirements of this section.

(a) *Minimum standards of construction and equipment.* A determination by the Director that the facility conforms (or upon completion of any necessary construction will conform) to the minimum standards of construction and equipment as set forth in § 52b.12 shall be obtained before entering into a final or unconditional contract for the acquisition and/or modernization of facilities. Where the Director finds that exceptions to or modifications of these minimum standards would be consistent with the purposes of the applicable section of the Act under which the acquisition or modernization is supported, the Director may authorize the exceptions or modifications.

(b) *Estimated cost of acquisition and remodeling: suitability of facility.* Each application for a project involving the acquisition of existing facilities shall include in the detailed estimates of the costs of the project, the cost of acquiring the facilities, and any cost of remodeling, renovating or altering the facilities to serve the purposes for which they are acquired. The application shall demonstrate to the satisfaction of the Director that the architectural, mechanical, electrical, plumbing, structural, and other pertinent features of the facility, as modified by any proposed expansion, remodeling, renovation, or alteration, will be suitable for the purposes of the applicable sections of the Act.

(c) *Bona fide sale.* Grant awards for the acquisition of existing facilities shall be subject to the condition that the acquisition constitutes a bona fide sale involving an actual cost to the applicant and will result in additional or improved facilities for purposes of the applicable provisions of the Act.

(d) *Facility previously funded by a federal grant.* No grant for the acquisition or modernization of a facility which has previously been funded in whole or in part by a federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of the prior grant.

(Approved by the Office of Management and Budget under Control Number 0925–0424; expires November 30, 2001)

§ 52b.12 What are the minimum requirements of construction and equipment?

(a) *General.* In addition to being subject to other laws, regulations, executive orders, and policies referred to in § 52b.14, the standards set forth in this section have been determined by the Director to constitute minimum requirements of construction and equipment, including the expansion, remodeling, renovation, or alteration of existing buildings, and these standards, as may be amended, or any revisions or successors of these standards, shall apply to all projects for which federal assistance is requested under this part. The publications referenced in this section are hereby incorporated by reference and made a part of the regulations in this part.

(b) *Incorporation by reference.* The Director of the Federal Register approves the incorporations by reference in paragraph (c) of this section in accordance with 5 U.S.C. 552(a)(1) and 1 CFR part 51. Copies may also be obtained from the organizations at the addresses listed in paragraph (c) of this section. Copies may be inspected at the National Cancer Institute, Executive Plaza North, Room 539, 6130 Executive Boulevard, Rockville, MD 20852 (telephone 301–496–8534; not a toll-free number); the National Center for Research Services, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, MD 20892 (telephone 301–496–5793); not a toll-free number); and at the Office of the Federal Register, 800 North Capital Street, NW, Suite 700, Washington, DC. The Director may for good cause shown, approve plans and specifications which contain deviations from the requirements prescribed in paragraph (c) of this section, if the Director is satisfied that the purposes of the requirements have been fulfilled. In addition to these requirements, each project shall meet the requirements of the applicable state and local codes and ordinances relating to construction.

(c) *Design and construction standards.* The facility shall comply with the following mandatory design and construction standards:

(1) ''Guidelines for Design and Construction of Hospital and Health Care Facilities'' (1996–97). American Institute of Architects Academy of Architecture for Health (AIA); available from AIA Rizzoli Catalogue Sales, 117 Post Street, San Francisco, CA 94108 (telephone 1–800–522–6657, fax 415–984–0024).

(2) 1995 ASHRAE Handbook: Heating, Ventilating, and Air Conditioning Applications (1995), Chapter 13, ''Laboratory Systems.'' American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329 (telephone 404–636–8400).

(3) ICBO ''Uniform Building Code,'' Volumes 1–3 (1997). International Conference of Building Officials (ICBO), 5360 South Workman Mill Road, Whittier, CA 90601–2298 (telephone 562–699–0541 or 800–284–4406).

(4) BOCA National Building Code (1996) 1998 Supplement, Building Officials and Code Administrators International, Inc. (BOCA), 4051 West Fossmoor Road, Country Club Hills, IL 60478–5795 (telephone 708–799–4981; fax 708–799–4981).

(5) ''Recommended Lateral Force Requirements and Commentary'' (1996). Structural Engineers Association of California; available from International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601–2298 (telephone 562–699–0541).

(6) ''Prudent Practices in the Laboratory: Handling and Disposal of Chemicals'' (1995). National Research Council; available from National Academy Press, 8700 Spectrum Drive, Landover, MD 20785 (telephone 1–800–624–6242).

(7) The following material is available for purchase from the National Fire Protection Association (NFPA), 11 Tracy Drive, Avon, MA 02322–9908 (telephone 617–770–3000 or 1–800–735–0100):

(i) NFPA 45, ''Standard on Protection for Laboratories Using Chemicals'' (1996).

(ii) NFPA 70, ''National Electric Code'' (1996).

(iii) NFPA 99, Chapter 4, ''Gas and Vacuum Systems'' (1996).

(iv) NFPA 101, ''Life Safety Code'' (1997).

(v) NFPA ''Health Care Facilities Handbook'' (1996).

(8) NSF Standard No. 49 for Class II (Laminar Flow) Biohazard Cabinetry (1992). National Sanitation Foundation (NSF), 3475 Plymouth Road, Box 1468, Ann Arbor, MI 48106 (telephone 734–769–9010).

(9) ACGIH ''Industrial Ventilation: A Manual of Recommended Practice'' (1998). American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240–1634 (telephone 513–742–2020).

(10) AIHA ''Laboratory Ventilation Workbook'' (1994). American Industrial Hygiene Association (AIHA), 2700 Prosperity Avenue, Suite 250, Fairfax, VA 22031 (telephone 703–849–8888).

(11) The following material is available for purchase from the Southern Building Code Congress (SBCC), 900 Montclair Road, Birmingham, AL 35213–1206 (telephone 205–591–1853; fax 202–591–0075:

(i) SBCC ''International Standard Plumbing Code'' (1997).

(ii) SBCC ''Standard Building Code'' (1997).

§ 52b.13 Additional conditions.

The Director may with respect to any grant award impose additional conditions consistent with the regulations of this part prior to or at the time of any award when in the Director's judgment the conditions are necessary to assure or protect advancement of the approved project, the purposes of the applicable provisions of the Act, or the conservation of grant funds.

§ 52b.14 Other federal laws, regulations, executive orders, and policies that apply.

Other federal laws, regulations, executive orders, and policies apply to grants under this part. These include, but are not necessarily limited to:

(a) *Laws.*

An Act to Provide for the Preservation of Historical and Archeological Data (and other purposes), as amended (16 U.S.C. 469 *et seq.*).

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).

Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*).

Flood Disaster Protection Act of 1973, section 202, as amended (42 U.S.C. 4106).

National Historic Preservation Act, section 106, as amended (16 U.S.C. 470f).

Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*).

(b) *Regulations.*

9 CFR part 3—Standards (Animal Welfare).

29 CFR 1910.1450—Occupational exposure to hazardous chemicals in laboratories.

36 CFR part 1190—Minimum guidelines and requirements for accessible design.

41 CFR part 101–19, subpart 101–19.6—Accommodations for the physically handicapped.

41 CFR part 101–19, subpart 101–19.6, Appendix A—Uniform Federal accessibility standards.

42 CFR part 50, subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science.

42 CFR part 50, subpart D—Public Health Service grant appeals procedure.

45 CFR part 15—Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.

45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR part 46—Protection of human subjects.

45 CFR part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with states, local governments and Indian tribal governments.

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964.

45 CFR part 81—Practice and procedure for hearings under part 80 of this chapter.

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefitting from Federal financial assistance.

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments.

45 CFR part 93—New restrictions on lobbying.

49 CFR part 24—Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.

(c) *Executive orders.*

Executive Order 11988, Floodplain Management (May 24, 1977)(3 CFR, 1977 Comp., p. 117).

Executive Order 11990, Protection of Wetlands (May 24, 1977)(3 CFR, 1977 Comp., p. 121).

Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (January 5, 1990)(3 CFR, 1990 Comp., p. 269).

(d) *Policies.*

(1) Design Policy and Guidelines (1996). Division of Engineering Services, National Institutes of Health (**Note:** To obtain copies of the policy, interested persons should contact the Division of Engineering Services, 9000 Rockville Pike, Building 13, Room 2E43, Bethesda, MD 20892 (telephone 301–496–6186; not a toll-free number) or visit the following site on the World Wide Web (http://des.od.nih/gov/nihpol.html).).

(2) NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research (1994) (**Note:** To obtain copies of the policy, interested persons should contact the Office of Research on

Women's Health, NIH, Room 201, Building 1, MSC 0161, Bethesda, MD 20892–0161 (telephone 301–402–1770; not a toll-free number).).

(3) NIH Guidelines for Research Involving Recombinant DNA Molecules (1994) (**Note:** To obtain copies of the policy, interested persons should contact the Office of Recombinant DNA Activities, NIH, 6000 Executive Boulevard, Suite 323, MSC 7010, Bethesda, MD 20892–7010 (telephone 301–496–9838; not a toll-free number).).

(4) ''NIH Grants Policy Statement.'' NIH Pub. No. 99–80 (Oct. 1998) (Note: To obtain copies of the policy, interested persons should contact the Extramural Outreach and Information Resources Office (EOIRO), Office of Extramural Research, NIH, 6701 Rockledge Drive, Room 6208, MSC 7910, Bethesda, MD 20892–7910 (telephone 301–435–0714; not a toll-free number). Information may also be obtained by contacting the EOIRO via its e-mail address (asknih@odrockml.od.nih.gov) and by browsing the NIH Home Page site on the World Wide Web (http://www.nih.gov).).

(5) ''Guide for the Care and Use of Laboratory Animals (1996). Institute of Laboratory Animal Resources, Commission on Life Sciences, National Research Council (**Note:** To obtain copies of the policy, interested persons should contact the Office for Protection from Research Risks, NIH, 6100 Executive Boulevard, Suite 3B01, MSC 7507, Rockville, MD 20852–7507 (telephone 301–496–7005; not a toll-free number).).

(6) ''Public Health Service Policy on Humane Care and Use of Laboratory Animals.'' (Rev. Sept. 1986). Office for Protection from Research Risks, NIH (Note: To obtain copies of the policy, interested persons should contact the Office for Protection from Research Risks, NIH, 6100 Executive Boulevard, Suite 3B01, MSC 7507, Rockville, MD 20852–7507 (telephone 301–496–7005; not a toll-free number).).

(7) ''Biosafety in Microbiological and Biomedical Laboratories.'' DHHS Publication No. (CDC) 88–8395 (1993). Centers for Disease Control and Prevention (CDC) (**Note:** To obtain copies of the policy, interested persons should contact the Division of Safety, Occupational Safety and Health Branch, NIH, 13 South Drive, Room 3K04, MSC 5760, Bethesda, MD 20892–5760 (telephone 301–496–2960; not a toll-free number).).

(8) ''NIH Guidelines for the Laboratory Use of Chemical Carcinogens,'' DHHS Publication No. (NIH) 81–2385 (May 1981) (**Note:** To obtain copies of the policy, interested persons should contact the Division of Safety, Occupational Safety and Health Branch, NIH, 13 South Drive, Room 3K04, MSC 5760, Bethesda, MD 20892–5760 (telephone 301–496–2960; not a toll-free number).).

(9) ''NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects (March 6, 1998).'' NIH Guide for Grants and Contracts (**Note:** To obtain copies of the policy, interested persons should contact the Office of Extramural Research, NIH, 6701 Rockledge Drive, Room 6208, MSC 7910, Bethesda, MD 20817–7910 (telephone 301–435–0714; not a toll-free number). Information may also be obtained by browsing the NIH Home Page site on the World Wide Web (http://www.nih.gov).).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74 and 101

[MM Docket 97–217; FCC 99–178]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: In this document, the Commission makes changes to the rules adopted in previous order which enabled licensees in the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') to engage in fixed two-way transmissions. These new rule changes further enhance the flexibility of MDS and ITFS operations by making certain technical modifications and by extending the streamlined application processing system to ITFS major modification applications.

DATES: Effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Reconsideration,* MM Docket, 97–217, adopted July 13, 1999 and released July 29, 1999. The full text of this *Reconsideration Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, S.W. Room CY–B402, Washington, D.C. 20554.

Synopsis of Report ad Order on Reconsideration on MDS and ITFS Two-Way Transmissions

I. Introduction

1. This *Reconsideration Order* is adopted by the Commission after receiving petitions for reconsideration of its Order in this docket. *Two-Way Order,* 63 FR 65087 (November 25, 1998). The *Order* was issued following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, ''Petitioners''), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. Traditionally, MDS and ITFS had been one-way video service providers. The Petitioners sought rule changes which would facilitate the provision of two-way digital service by these providers. The *Order* (1) permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. The *Reconsideration Order* further modified some of the technical rules and extended the streamlined application processing system to all ITFS modification applications. These rule changes were designed to provide greater flexibility to operators in the design and operation of systems. We believe that the rule modifications we adopt in the *Reconsideration Order* will facilitate the most efficient use of the affected spectrum, enhance the competitiveness of the wireless cable industry, and provide benefits to the educational community through the use of two-way services, while still permitting traditional use of the spectrum, thus giving both MDS and ITFS licensees the flexibility they need to serve the public interest.

II. Procedural Changes to Rules

A. Application Processing Issues

2. In the *Order,* we adopted an application processing system that will substantially shift review of applications for new or modified response station hubs, boosters or downstream I Channel operations from Commission staff and leave much of the interference environment to be worked out by licensees. This system will now be extended to all ITFS modification applications. This system includes a one-day rolling filing window system. Each applicant will be required to

demonstrate protection of existing or previously proposed facilities, but applications filed on the same day will be granted and the filers left to resolve incompatibilities among themselves with little or no intervention by Commission staff. Because parties will be unable to offer reliable service without resolving such conflicts, we believe that the incentive to reach a resolution will be so great that Commission involvement will be unnecessary to resolve disputes.

3. Applications will be placed on public notice without prior staff review of interference studies. The applicant must certify that it has completed, served upon potentially affected parties, and submitted to the Commission's copy contractor all required interference studies (or consent letters) and engineering showings demonstrating no interference. Before placing an application on public notice, Commission staff will review it to ensure that all required certifications are included, and any application that does not contain proper certifications will be dismissed. The application will be granted in reliance on the certifications on the 61st day after public notice, unless a petition to deny is filed or the application is subject to a random audit. A false certification will result in denial of the application and be grounds for license revocation. Though consistent with similar certification procedures that have been adopted for other communications services, this approach is particularly appropriate for MDS and ITFS, because of the interdependent and cooperative nature of the services. Any system causing non-consensual interference must cure it immediately or face shut-down, even if the relevant station applications had been unopposed.

4. Because a large number of potentially conflicting applications are likely to be filed as soon as the new rules become effective, we have adopted a special one-week initial filing window, which will be announced by public notice. All applications filed during that window will be deemed filed as of the same day. Following the public notice announcing the filing of the applications submitted during that window, applicants will have a period of 60 days, during which no additional applications may be filed, to amend their applications and resolve conflicts. This 60-day period is the only time at which amendments may be made to any engineering portion of the application. Such amendments are not permitted once the rolling one-day filing window is in place. At the end of the 60-day period, the applications, as amended where applicable, will again be placed on public notice and be at that time subject to the same petition to deny, audit and grant procedures as during the one-day rolling filing window. We believe that our adoption of the one-week initial filing window will lessen the burden on all affected parties, including the Commission's staff, during the first round of application filing. We also believe that providing parties with an initial 60-day period during which they can resolve any apparent conflicts and then amend their applications without prejudice will serve to expedite service to the public by allowing parties to resolve their differences without the need to seek Commission review through the petition to deny process.

5. When parties seek to create two-way systems that make the most efficient use of spectrum and that respond most effectively to public needs, it often will be necessary to make major modifications to existing ITFS facilities. Under the old system, these major modifications could only be sought in the context of a filing window. Waiting for such a filing window could seriously impede the creation of two-way systems and delay service to the public. We believe that by expanding the streamlined application processing system to cover all ITFS modification applications, including those which formerly required a window for filing, will greatly facilitate the creation of effective two-way systems to the benefit of MDS and ITFS licensees as well as to consumers.

B. Interference Complaints

6. In the *Two-Way Order*, we stated that a ''documented complaint'' was required in the event of non-consensual interference in order to compel mandatory shut-down of an allegedly interfering station. At the urging of Petitioners and other parties, in the *Reconsideration Order*, we set out the requirements for such a complaint.

7. Because the two-way paradigm is premised on cooperation between the parties, the documented complaint must contain a certification that the complainant has contacted the operator of the allegedly offending facility and attempted to resolve the situation before filing. The complaint must also specify: the nature of the interference, whether the interference is constant or intermittent, when the interference began and the site(s) most likely to be causing the interference. Where possible evidence demonstrating the effects of the interference should be included. Finally, the complaint must contain a motion for a temporary order that the interfering station cease transmitting. The complained against party shall have two business days from the date of filing to respond and the burden of proof lies on the complained against party. If we find in favor of the complainant, we shall order immediate shut-down of the facility and the operator of that facility must submit proof that the interference has been cured before it will be allowed to recommence operations.

C. Interference

8. *Registration of ITFS Receive Sites*. The Catholic Television Network (''CTN'') asked to us clarify that we will continue to register ITFS receive sites. However, because we granted each ITFS licensee a 35-mile protected service area (''psa'') and granted individual protection to all receive sites registered through the date of adoption of the *Two-Way Order*, we instead make clear that we will not any longer register ITFS receive sites. BellSouth requested that we hold that point-to-point ITFS receive sites would not be entitled to a psa. We reject that request because it would place an unacceptable burden on ITFS licensees who wish to convert from point-to-point to point-to-multipoint transmission in the future.

9. *Advance Notification and Professional Installation*. In the *Two-Way Order*, we created a notification zone with a radius of 1960 feet around each ITFS receive site and required that the associated hub station licensee notify the appropriate ITFS licensee by certified mail at least 20 days prior to activation of any response station. We also required that response station transmitters be professionally installed to help prevent interference and to minimize the risk of human exposure to potentially hazardous radio-frequency (''RF'') emissions. In the *Reconsideration Order*, we modify these requirements in certain circumstances.

10. We amend our rules to eliminate the notification and professional installation requirements for digital response stations in two-way cellularized systems utilizing no more than 18 dBW EIRP, contingent upon the operator of the associated hub station providing and installing replacement downconverters at registered ITFS receive sites with the outer edge to response station service area add beyond to a distance of 1960 feet. We also completely eliminate the profession installation and notification requirements for any response station operating with EIRP no greater than -6 dBW. In both cases, the problems these rules were meant to address, downconverter overload and unsafe exposure to RF emissions, are unlikely

to be caused as a result of the use of improved equipment in the first case and the very low power levels involved in the second case. Both of these changes should facilitate the installation of a very large number of response stations without the need for advance notification or professional installation, thereby cutting costs and making the service more affordable for users. We also waive our rules to permit the use of omnidirectional antennae at any response station with an EIRP no greater than -6 dBW. We also amended our rules to permit an ITFS licensee to waive the professional installation and advance notification requirements in regard to its own facilities.

11. *Timing and Method of Advance Notification*. Except for those stations which are subject to one of the exceptions we adopted, we retain our advance notification requirement, but reduce the timing of the notification to one business day in advance of such activation. The main purpose of the advance notification requirement is to jump-start the interference identification process and we are persuaded that one business day is sufficient for that purpose. At the same time, this time period allies the concerns expressed by some parties of the anti-competitive effects of a longer period. We also will permit the notification to be performed by fax or e-mail if the ITFS licensee has elected to receive it by either of these methods.

D. Technical Standards

12. *Spectral Mask*. We clarify that for emissions such as QPSK and 4–QAM, the ''flat top'' portion of the signal is the only point within the channel at which a correct comparison of the relative levels of in-band and out-of-band power can be taken. We also emphasize that such emissions are constrained in terms of maximum permissible EIRP by the degree to which they are non-uniform.

13. *Frequency Tolerance*. We amend the frequency tolerance requirement to 0.001% for non-VSB digital emissions, because this will not increase the potential for interference from these stations and will reduce the cost of manufacturing the oscillators used in these transmitters very significantly.

14. *Other Technical Considerations*. We agree with CTN that the terms ''free space'' and ''unobstructed path'' in the rule pertaining to interference calculations are used inconsistently and replace them with the term ''terrain sensitive methodology.'' We also clarify that only the Epstein-Peterson signal propagation model may be used for interference calculations performed in accordance with Appendix D of both the *Two-Way Order* and the *Reconsideration Order*.

15. *Use of 125 kHz Channels*. Consistent with our decision to broaden the field of ITFS and MDS applications subject to streamlined processing, we permit applications for traditional return-path use of I channels to filed under that system. We reject CTN's proposal to make all downstream operations on the I Channel secondary, this would undermine our goals of flexibility and efficiency in the spectrum.

E. Issues Primarily Involving ITFS

16. *Channel Swapping and Shifting*. In the *Two-Way Order*, we authorized the use of channel swapping and shifting in systems where some party was using digital transmissions to provide maximum system flexibility and to give ITFS licensees flexibility in fulfilling their educational requirements. We now expand this authorization to permit channel swapping and shifting regardless of whether digital transmissions are employed. This will further maximize the flexibility of the service and benefit the public.

17. *Grandfathering of Excess Capacity Lease Provisions*. We clarified that a lease containing a provision that automatically extended a 10-year initial term (formerly the maximum allowable term) to the maximum allowed by the Commission, did not loose its grandfathered status. However, we also clarified that a provision that simply automatically renewed the lease did not protect the leases grandfathered status. The first clarification will prevent any need for a mass renegotiation of leases, while the second will prevent leases from being grandfathered into perpetuity.

F. Booster Stations

18. We amend our rules to make clear that a high-power booster may be utilized for digital and/or analog modulation, and that two-way operations are not a prerequisite for licensing a high-power booster. We also will permit ITFS excess-capacity lessees to apply for booster stations on ITFS frequencies if (1) the have the written consent of the main station licensee and (2) the lease contains a provision that requires the lessee to offer to assign the booster licenses to the main station licensee for purely nominal consideration upon lease termination.

G. Digital Declaratory Ruling

19. *Limited Exception to the Protected Service Area Definition for Modifications*. Under our Rules, a modifying applicant may secure a waiver of the 35 mile psa definition and maintain ''grandfathered'' interference subject to six conditions: (1) the modification is filed after the effective date of the expanded psa; (2) the station being modified was authorized or proposed prior to that date; (3) the desired station was authorized on or before the effective date; (4) the predicted interference does not occur within the 710 square mile psa of the desired station; (5) the modification does not increase the size of the area suffering harmful interference; and (6) the modification does not result in any new interference to the desired station's psa. This exception may be expanded for any modification not resulting in new interference tot he desired station's psa nor increasing the size of the area suffering harmful interference to effectively nullify the fourth condition of the exception and allow preexisting interference even with the former 70 square mile psa which pertained prior to September 15, 1995. We also expand the exception to cover any modification application where either the modifying or desired station was proposed after the effective date of the expanded psa.

20. *Rights of Licensees Where Digital Operation Affects Use of Frequency Offset*. We will continue to evaluate involuntary frequency offset proposals on a case-by-case basis. We also decline to mandate, at this time, a particular frequency offset or tolerance for the pilot carrier stations utilizing VSB digital modulation.

H. Procedural Matters

Ordering Clauses

21. Accordingly, It is ordered that the above-referenced petitions for reconsideration and/or clarification of the *Order are granted in part and denied in part*, as described above.

22. *It is further ordered* that the above-referenced petitions for clarification of the *Digital Declaratory Ruling are granted in part and denied in part*, and that the *Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations is modified and clarified* to the extent specified above. These modifications and clarifications shall be effective upon the release of this order.[1]

23. *It is further ordered* that the application for review of the October 17 Public Notice, filed November 18, 1996 by CAI Wireless Systems, Inc., *is dismissed as moot*.

24. *It is further ordered* that, pursuant to the authority contained in Sections

[1] *See* 47 CFR 1.4(b)(2) and 1.103.

4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 308(b), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 308(b), 403, and 405, this Report and Order on Reconsideration *is adopted*, the *Order is modified and clarified* to the extent specified above, and Parts 21, 74 and 101 of the Commission's Rules, 47 CFR 21, 74 and 101 *are amended* as set forth in the Rule Changes.

25. 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 (OMB) as prescribed by the Act. The new or modified paperwork requirements contained in this *Report and Order on Reconsideration* (which are subject to approval by OMB) will go into effect upon OMB approval. However, *it is further ordered* that the rule amendments set forth in Appendix C not pertaining to new or modified reporting or recordkeeping requirements *will become effective* January 21, 2000.

26. As required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis of the possible impact on small entities of the rules and policies adopted in this document. *See* Appendix B. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Report and Order on Reconsideration*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and recordkeeping requirements, Television.

47 CFR Part 101

Fixed Microwave Services.

Federal Communications Commission.

Magalie Román Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 21, 74 and 101 as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.2 is amended by adding the definition of ''Documented complaint'' and by revising the first sentence of the definition of ''Response station hub'' to read as follows:

§ 21.2 Definitions

* * * * *

Documented complaint. A complaint that a party is suffering from non-consensual interference. A documented complaint must contain a certification that the complainant has contacted the operator of the allegedly offending facility and tried to resolve the situation prior to filing. The complaint must then specify the nature of the interference, whether the interference is constant or intermittent, when the interference began and the site(s) most likely to be causing the interference. The complaint should be accompanied by a videotape or other evidence showing the effects of the interference. The complaint must contain a motion for a temporary order to have the interfering station cease transmitting. The complaint must be filed with the Secretary's office and served on the allegedly offending party.

* * * * *

Response station hub. A fixed facility licensed to an MDS licensee, and operated by an MDS licensee or the lessee of an MDS facility, for the reception of information transmitted by one or more MDS response stations that utilize digital modulation. * * *

* * * * *

§ 21.11 [Amended]

3. Section 21.11(d) is amended by removing the number ''702'' and adding, in its place, the number ''305,'' and in paragraph (e) by removing the number ''704'' and adding, in its place, the number ''306.''

4. Section 21.23 is amended by revising paragraph (c)(1)(vi) and by adding paragraph (c)(2) to read as follows:

§ 21.23 Amendment of applications.

* * * * *

(c) * * *

(1) * * *

(vi) Any technical change which would increase the effective radiated power in any horizontal or vertical direction by more than one and one-half (1.5) dB; or

* * * * *

(2) Except during the sixty (60) day amendment period provided for in § 21.27(d) of this part, any amendment to an application for a new or modified response station hub, booster station or point-to-multipoint I channel(s) station or to an application for a modified main station that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility or submits any interference consent from a neighboring licensee. Such an amendment shall result in the application being assigned a new file number and being treated as newly filed.

* * * * *

5. Section 21.31 is amended by revising paragraph (a) and removing paragraph (e)(6)(iv) to read as follows:

§ 21.31 Mutually exclusive applications.

(a) Except with respect to applications for new or modified response stations hubs, booster stations, and point-to-multipoint I channel stations, and to applications for modified main stations, filed on the same day or during the same window, the Commission will consider applications to be mutually exclusive if their conflicts are such that grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications.

* * * * *

6. Section 21.101 is amended by revising footnote 2 to paragraph (a) to read as follows:

§ 21.101 Frequency tolerance.

* * * * *

[2] Beginning January 21, 2000, the equipment authorized to be used at all MDS main stations, and at all MDS booster stations authorized pursuant to § 21.913(b) of this part, shall maintain a frequency tolerance of 0.001%. MDS booster stations authorized pursuant to § 21.913(e) of this part and MDS response stations authorized pursuant to § 21.909 of this part shall employ transmitters with sufficient frequency

stability to ensure that the emission is, at all times, within the required emission mask.

7. Section 21.201 is revised to read as follows:

§ 21.201 Posting of station license.

(a) The instrument of authorization, a clearly legible photocopy thereof, or the name, address and telephone number of the custodian of the instrument of authorization shall be available at each station, booster station authorized pursuant to § 21.913(b) and MDS response station hub. Each operator of an MDS booster station shall post at the booster station the name, address and telephone number of the custodian of the notification filed pursuant to § 21.913(e) if such notification is not maintained at the booster station.

(b) If an MDS station, an MDS booster station or an MDS response station hub is operated unattended, the call sign and name of the licensee shall be displayed such that it may be read within the vicinity of the transmitter enclosure or antenna structure.

8. Section 21.900 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (a)(1), (a)(2), and (a)(3) respectively, by designating the introductory text as paragraph (a) introductory text, and by designating the concluding text as paragraph (b) and revising it to read as follows:

§ 21.900 Eligibility.

* * * * *

(b) The applicant shall state whether service will be provided initially on a common carrier basis or on a non-common carrier basis. An applicant proposing to provide initially common carrier service shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

9. Section 21.901 is amended by revising paragraph (d) to read as follows:

§ 21.901 Frequencies.

* * * * *

(d) An MDS licensee or conditional licensee may apply to exchange evenly one or more of its assigned channels with another MDS licensee or conditional licensee in the same system, or with an ITFS licensee or conditional licensee in the same system. The licensees or conditional licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee.

* * * * *

10. Section 21.902 is amended by revising paragraphs (b)(3), (b)(4), (b)(7), (f)(1), (f)(2)(i), (f)(2)(ii), (i)(1), (i)(2), (i)(4) introductory text, (i)(4)(iii) through (i)(4)(v), (i)(6)(i) introductory text, (i)(6)(iii)(E), (i)(6)(iii)(F) and (i)(6)(iv) to read as follows:

§ 21.902 Interference.

* * * * *

(b) * * *

(3) Engineer the system to provide at least 45 dB of cochannel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously-proposed ITFS or incumbent MDS station, and at each previously-registered ITFS receive site registered as of September 17, 1998 (or the appropriate value for bandwidths other than 6 MHz.)

(4) Engineer the station to provide at least 0 dB of adjacent channel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously-proposed ITFS or incumbent MDS station, and at each previously-registered ITFS receive site registered as of September 17, 1998 (or the appropriate value for bandwidths other than 6 MHz.)

* * * * *

(7) Notwithstanding the above, main, booster and response stations shall use the following formulas, as applicable, for determining compliance with: (1) Radiated field contour limits where bandwidths other than 6 MHz are employed at stations utilizing digital emissions; and (2) Cochannel and adjacent channel D/U ratios where the bandwidths in use at the interfering and protected stations are unequal and both stations are utilizing digital modulation or one station is utilizing digital modulation and the other station is utilizing either 6 MHz NTSC analog modulation or 125 kHz analog modulation (I channels only).

(i) Contour limit: -73 dBW/m^2 + 10 log(X/6) dBW/m^2, where X is the bandwidth in MHz of the digital channel.

(ii) Co-channel D/U: 45 dB + 10 log(X_1/X_2) dB, where X_1 is the bandwidth in MHz of the protected channel and X_2 is the bandwidth in MHz of the interfering channel.

(iii) Adjacent channel D/U: 0 dB + 10 log(X_1/X_2), dB where X_1 is the bandwidth in MHz of the protected channel and X_2 is the bandwidth in MHz of the interfering channel.

* * * * *

(f) * * *

(1) Cochannel interference is defined as the ratio of the desired signal to the undesired signal present in the desired channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal. Harmful interference will be considered present when a calculation using a terrain sensitive signal propagation model determines that this ratio is less than 45 dB (or the appropriate value for bandwidths other than 6 MHz.)

(2) * * *

(i) Harmful interference will be considered present when a calculation using a terrain sensitive model determines that this ratio is less than 0dB (or the appropriate value for bandwidths other than 6 MHz.)

(ii) In the alternative, harmful interference will be considered present for an ITFS station constructed before May 26, 1983, when a calculation using a terrain-sensitive propagation model determines that this ratio is less than 10 dB (or the appropriate value for bandwidths other than 6 MHz.) unless:

* * * * *

(i)(1) For each application for a new station, or amendment thereto, proposing MDS facilities, filed on October 1, 1995, or thereafter, on or before the day the application or amendment is filed, the applicant must prepare, but is not required to submit with its application or amendment, an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful electrical interference to each receive site registered as of September 17, 1998, nor within a protected service area as defined at paragraph (d)(1) of this section, of any cochannel or adjacent channel ITFS station licensed, with a conditional license, or proposed in a pending application on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

(2) For each application described in paragraph (i)(1) of this section, the applicant must serve, by certified mail, return receipt requested, on or before the day the application or amendment described in paragraph (i)(1) of this section is filed initially with the Commission, a copy of the complete MDS application or amendment, including each exhibit and interference study, described in paragraph (i)(1) of this section, on each ITFS licensee, conditional licensee, or applicant described in paragraph (i)(1) of this section.

* * * * *

(4) For each application described in paragraph (i)(1) of this section, the applicant must file with the Commission in Washington, DC, on or before the 30th day after the application or amendment described in paragraph (i)(1) of this section is filed initially with the Commission, a written notice which contains the following:

* * * * *

(iii) A list of each ITFS licensee and conditional licensee described in paragraph (i)(1) of this section;

(iv) The address used for service to each ITFS licensee and conditional licensee described in paragraph (i)(1) of this section; and

(v) A list of the date each ITFS licensee and conditional licensee described in paragraph (i)(1) of this section received a copy of the complete application or amendment described in paragraph (i)(1) of this section; or a notation of lack of receipt by the ITFS licensee or conditional licensee of a copy of the complete application or amendment, on or before such 30th day, together with a description of the applicant's efforts for receipt by each such licensee or conditional licensee lacking receipt of the application.

* * * * *

(6) (i) Notwithstanding the provisions of Sections 1.824(c) and 21.30(a)(4), for each application described in paragraph (i)(1) of this section, each ITFS licensee and each ITFS conditional licensee described in paragraph (i)(1) of this section may file with the Commission, on or before the 30th day after the public notice described in paragraph (i)(5) of this section, a petition to deny the MDS application.

* * * * *

(iii) * * *

(E) Include a demonstration, in those cases in which the MDS applicant's analysis is dependent upon modification(s) to the ITFS facility, that the harmful interference cannot be avoided by the proposed substitution of new or modified equipment to be supplied and installed by the MDS applicant, at no expense to the ITFS licensee or conditional licensee; and

(F) Be limited to raising objections concerning the potential for harmful interference to its ITFS station, or concerning a failure by the MDS applicant to serve the ITFS licensee or conditional licensee with a copy of the complete application or amendment described in paragraph (i)(1) of this section.

(iv) The Commission will presume an ITFS licensee or conditional licensee described in paragraph (i)(1) of this section has no objection to operation of the MDS station, if the ITFS licensee or conditional licensee fails to file a petition to deny by the deadline prescribed in paragraph (i)(6)(i) of this section.

* * * * *

§ 21.903 [Amended]

11. Section 21.903 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) An MDS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

12. Section 21.904 is revised to read as follows:

§ 21.904 EIRP limitations.

(a) The maximum EIRP of a main or booster station shall not exceed 33 dBW + 10log(X/6) dBW, where X is the actual bandwidth if other than 6 MHz, except as provided in paragraph (b) of this section.

(b)(i) If a main or booster station sectorizes or otherwise uses one or more transmitting antennas with a non-omnidirectional horizontal plane radiation pattern, the maximum EIRP in a given direction shall be determined by the following formula:

EIRP = 33 dBW + 10 log(X/6) dBW + 10 log(360/beamwidth) dBW, where X is the channel width in MHz and 10 log(360/beamwidth) ≤ 6 dB.

(ii) Beamwidth is the total horizontal plane beamwidth of the individual transmitting antenna for the station or any sector measured at the half-power points.

(c) An increase in station EIRP, above currently-authorized or previously-proposed values, to the maximum values provided in paragraphs (a) and (b) of this section may be authorized, if the requested increase would not cause harmful interference to any authorized or previously-proposed, cochannel or adjacent channel station entitled to interference protection under the Commission's rules, or if an applicant demonstrates that:

(1) A station that must be protected from interference could compensate for interference by increasing its EIRP; and

(2) The interfered-with station may increase its own EIRP consistent with the rules and without causing harmful interference to any cochannel or adjacent channel main or booster station protected service area, response station hub or BTA/PSA, for which consent for the increased interference has not been obtained; and

(3) The applicant requesting authorization of an EIRP increase agrees to pay all expenses associated with the increase in EIRP by the interfered-with station.

(d) For television transmission if the authorized bandwidth is 4.0 MHz or more for the visual and accompanying aural signal, the peak power of the accompanying aural signal must not exceed 10 percent of the peak visual power of the transmitter. The Commission may order a reduction in aural signal power to diminish the potential for harmful interference.

(e) For main, booster and response stations utilizing digital emissions with non-uniform power spectral density (*e.g.* unfiltered QPSK), the power measured within any 100 kHz resolution bandwidth within the 6 MHz channel occupied by the non-uniform emission cannot exceed the power permitted within any 100 kHz resolution bandwidth within the 6 MHz channel if it were occupied by an emission with uniform power spectral density, *i.e.*, if the maximum permissible power of a station utilizing a perfectly uniform power spectral density across a 6 MHz channel were 2000 watts EIRP, this would result in a maximum permissible power flux density for the station of 2000/60 = 33.3 watts EIRP per 100 kHz bandwidth. If a non-uniform emission were substituted at the station, station power would still be limited to a maximum of 33.3 watts EIRP within any 100 kHz segment of the 6 MHz channel, irrespective of the fact that this would result in a total 6 MHz channel power of less than 2000 watts EIRP.

13. Section 21.905 is amended by revising paragraphs (b) and (d) introductory text to read as follows:

§ 21.905 Emissions and bandwidth.

* * * * *

(b) Quadrature amplitude modulation (QAM), digital vestigial sideband modulation (VSB), quadrature phase shift key modulation (QPSK), code division multiple access (CDMA), and orthogonal frequency division multiplex (OFDM) emissions may be employed, subject to compliance with the policies set forth in the Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996). Use of OFDM also is subject to the subsequent Declaratory Ruling and Order, DA 99–554 (Mass Med. Bur. rel. Mar. 19, 1999). Other digital emissions may be added to

those authorized above, including emissions with non-uniform power spectral density, if the applicant provides information in accordance with the guidelines and procedures set forth in the Declaratory Ruling and Order which clearly demonstrates the spectral occupancy and interference characteristics of the emission. The licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel, and may utilize all or a portion of its authorized bandwidth for MDS response stations authorized pursuant to § 21.909 of this part. The licensee may also, jointly with affected adjacent channel licensees, transmit utilizing bandwidth in excess of its authorized frequencies, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in § 21.908 of this part are met at and beyond the edges of the channels employed. The wider channels thus created may be redivided to create narrower channels.

* * * * *

(d) Notwithstanding the above, any digital emission which complies with the out-of-band emission restrictions of § 21.908 of this part may be used in the following circumstances:

* * * * *

14. Section 21.906 is amended by revising paragraph (a) and by removing the third sentence from paragraph (d) to read as follows:

§ 21.906 Antennas.

(a) Main and booster station transmitting antennas shall be omnidirectional, except that a directional antenna with a main beam sufficiently broad to provide adequate service may be used either to avoid possible interference with other users in the frequency band, or to provide coverage more consistent with distribution of potential receiving points. In lieu of an omnidirectional antenna, a station may employ an array of directional antennas in order to reuse spectrum efficiently. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to § 21.42 of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in degree of azimuth, with respect to true north, and the make and model of such antenna(s).

* * * * *

15. Section 21.909 is amended by revising the last sentence of paragraph (a), paragraphs (b), (c) and (d), (g)(3), (g)(6)(i), (g)(6)(ii), (g)(8), (h), (k), (m), (n), and the first sentence of pargagraph (o) to read as follows:

§ 21.909 MDS response stations.

(a) * * * When a 125 kHz channel is employed, the specific channel which may be used by the response station is determined in accordance with §§ 21.901 and 74.939(j) of this chapter.

(b) MDS response stations that utilize the 2150–2162 MHz band, the 2500–2686 MHz band, and/or the 125 kHz channels may be installed and operated without an individual license, to communicate with a response station hub, provided that the conditions set forth in paragraph (g) of this section are met and that the MDS response stations' technical parameters are consistent with all applicable rules in this part and with the terms and conditions set out in the Commission's *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996).

(c) An applicant for a response station hub license, or for modification thereto where not subject to § 21.41 or § 21.42, shall:

(1) File FCC Form 331 with Mellon Bank, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section and that the interference data submitted under paragraph (d) of this section is complete and accurate. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit the following to the Commission's copy contractor, both in hard copy and on sequential 3.5″ DSHD computer diskettes in ASCII for all Appendix D data and in a format to be specified by public notice for all other submissions:

(i) Duplicates of the Form 331 filed with Mellon Bank; and

(ii) The data required by Appendix D to the *Report and Order on Reconsideration* in MM Docket No. 97–217, FCC 99–178, ''Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems'' as amended; and

(iii) The information, showings and certifications required by paragraph (d) of this section; and

(3) Submit to the Commission, only upon Commission staff request, duplicates of the submissions required by paragraph (c)(2) of this section.

(d) An applicant for a response station hub license shall, pursuant to paragraph (c)(2)(iii) of this section, submit to the Commission's copy contractor, in a format to be specified by the Commission at a later date, the following:

(1) The channel plan (including any guardbands at the edges of the channel) to be used by MDS response stations in communicating with each response station hub, including a statement as to whether the applicant will employ the same frequencies on which response stations will transmit to also transmit on a point-to-multipoint basis from an MDS station or MDS booster station; and

(2) A demonstration that:

(i) The proposed response station hub is within a protected service area, as defined in § 21.902(d) or § 21.933, to which the applicant is entitled either:

(A) by virtue of its being the licensee of an incumbent MDS station whose channels are being converted for MDS response station use; or

(B) by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response station hub is within the protected service area of the station authorized to utilize the associated E-Group or F-Group channel(s); and

(ii) The entire proposed response service area is within a protected service area to which the applicant is entitled either (A) by virtue of its being the licensee of an incumbent MDS station whose channels are being converted for MDS response station use; or (B) by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization. In the alternative, the applicant may demonstrate that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response service area is entirely within the protected service area of the station authorized to utilize the associated E-Group or F-Group channel(s), or, in the alternative, that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap; and

(iii) The combined signals of all simultaneously operating MDS response

stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant will not generate a power flux density in excess of −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) outside the boundaries of the applicant's protected service area, as measured at locations for which there is an unobstructed signal path, except to the extent that consent of affected licensees has been obtained or consents have been granted pursuant to paragraph (d)(3)(ii) of this section to an extension of the response service area beyond the boundaries of the protected service area; and

(iv) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 45 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(ii)):

(A) within the protected service area of any authorized or previously-proposed cochannel MDS or ITFS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any cochannel booster station entitled to such protection pursuant to §§ 21.913(f) or 74.985(f) of this chapter and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed cochannel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee of or applicant for such cochannel station or hub consents to the application; and

(v) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 0 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(iii)):

(A) within the protected service area of any authorized or previously-proposed adjacent channel MDS or ITFS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any adjacent channel booster station entitled to such protection pursuant to §§ 21.913(f) or 74.985(f) of this chapter and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed adjacent channel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee of or applicant for such adjacent channel station or hub consents to the application; and

(vi) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hub and all cochannel MDS stations and booster stations licensed to or applied for by the applicant will comply with the requirements of paragraph (i) of this section and § 74.939(i) of this chapter.

(3) A certification that the application has been served upon

(i) the holder of any cochannel or adjacent channel authorization with a protected service area which is overlapped by the proposed response service area;

(ii) the holder of any cochannel or adjacent channel authorization with a protected service area that adjoins the applicant's protected service area;

(iii) the holder of a cochannel or adjacent channel authorization for any BTA or PSA inside whose boundaries are locations for which there is an unobstructed signal path for combined signals from within the response station hub applicant's protected service area; and

(iv) every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed, incumbent MDS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub;

(v) every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed ITFS station (including any booster station or response station hub) located within 160.94 km (100 miles) of the proposed response station hub; and

(vi) every licensee of any non-cochannel or non-adjacent channel ITFS station (including any booster station) with one or more registered receive sites in, or within 1960 feet of the proposed response station service area.

(g) * * *

* * * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub pursuant to paragraph (d)(2)(i)(B) of this section for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate at an excess of 33 dBW + 10 log(X/6) dBW, where X is the channel width in MHz; and

* * * * *

(6) * * *

(i) First notifies the Commission, in a format to be specified by public notice, of the altered number of response stations of such class(es) to be operated simultaneously in such region, and certifies in that notification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section, and that the interference data submitted under paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's copy contractor with a set of sequential 3.5″ DSHD diskettes in ASCII format which update the previously filed response station data (*see* § 21.909(c)(2)(ii) of this part) and with an analysis, in a format to be specified by public notice establishing that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 of this part or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

* * * * *

(8) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent response station hub with a response service area within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of

the interference. Each licensee of a response station hub with an associated response station contributing to such interference shall bear the joint and several obligation to promptly remedy all block downconverter overload interference at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application for the response station hub license, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the response station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the response station hub licensee to prevent interference before constructing response stations and/or to remedy interference that may occur. In the event that the associated response station(s) of more than one response station hub licensee contribute(s) to block downconverter interference at an MDS or ITFS receive site, such hub licensees shall cooperate in good faith to remedy promptly the interference.

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(k) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the hub licensee as often as necessary to ensure that it is functioning in accordance with the requirements of the Commission's rules. The licensee of a response station hub is responsible for the proper operation of all associated response station transmitters. Each response station hub licensee is responsible for maintaining, and making available to the Commission upon request, a list containing all customer names and addresses, plus the technical parameters (EIRP, emission, bandwidth, antenna pattern/ height/ orientation/ polarization) pertinent to each class of response station within the response service area.

* * * * *

(m) An MDS response station shall be operated only when engaged in communications with its associated MDS response station hub or MDS station or booster station, or for necessary equipment or system tests and adjustments. Upon initial installation, and upon relocation and reinstallation, a response station transmitter shall be incapable of emitting radiation unless, and until, it has been activated by reception of a signal from the associated MDS station or booster station. A hub station licensee shall be capable of remotely de-activating any and all response station transmitters within its RSA by means of signals from the associated MDS station or booster station. Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden.

(n) All response stations utilizing an EIRP greater than 18 dBW shall be installed by the associated hub licensee or by the licensee's employees or agents. For the purposes of this section, all EIRP dBW values assume the use of a 6 MHz channel. For channel bandwidths other than 6 MHz, the EIRP dBW values should be adjusted up (channel >6 MHz) or down (channel <6 MHz) by 10 log(X/6) dBW, where X is the channel width in MHz. For response stations located within 1960 feet of an ITFS receive site registered and built prior to the filing of the application for the hub station license, the hub licensee must notify the licensee of the ITFS receive site at least one business day prior to the activation of these response stations. The notification must contain, for each response station to be activated, the following information: name and telephone number of a contact person who will be responsible for coordinating the resolution of any interference problems; street address; geographic coordinates to the nearest second; channels/subchannels (transmit only); and transmit antenna pattern, EIRP, orientation and height AMSL. (If transmit antenna pattern, EIRP, orientation or height AMSL are not known with specificity at the time of notification, the hub licensee may, instead, specify the worst-case values for the class of response station being activated.) Such notice to the ITFS licensee shall be given in writing by certified mail unless the ITFS licensee has requested delivery by email or facsimile. The ITFS licensee may waive the notification requirement on a site-specific basis or on a system-wide basis. The notification provisions of this section shall not apply if:

(1) The response station will operate at an EIRP no greater than −6 dBW; or

(2) The response station will operate at an EIRP greater than −6 dBW and no more than 18 dBW and:

(i) The channels being received at the ITFS site are neither the same as, nor directly adjacent to, the channel(s) to be transmitted from the response station; and

(ii) The hub station licensee has replaced, at its expense, the frequency downconverters used at all ITFS receive sites registered and constructed prior to the filing of the hub station application which are within 1960 feet of the hub station's response service area; and

(iii) The downconverters, at a minimum, conform to the following specifications:

(A) A frequency of operation covering the 2150–2162 MHz band or the 2500–2686 MHz band; and

(B) A third-order intercept point of 30 dBm; and

(C) A conversion gain of 32 dB, or the same conversion gain as the existing ITFS downconverter, whichever is least; and

(D) A noise figure of no greater than 2.5 dB, or no more than 1 dB greater than the noise figure of the existing ITFS downconverter, whichever is greater; and

(iv) The proposal to upgrade the ITFS downconverter was made in writing and served upon the affected ITFS licensee, conditional licensee or applicant at the same time the application for the response station hub license was served on cochannel and adjacent channel ITFS parties and no objection was made within the 60-day period allowed for petitions to deny the hub station application.

(o) Interference calculations shall be performed in accordance with Appendix D to the *Report and Order on Reconsideration* in MM Docket No. 97–217, FCC 99–178, ''Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems'' as amended.

* * *

16. Section 21.910 is amended by revising the section heading, removing the introductory text, revising paragraphs (a) and (b), and removing paragraphs (c) and (d) to read as follows:

§ 21.910 Special procedures for discontinuance, reduction or impairment of service by common carrier licensees.

(a) Any licensee who has elected common carrier status and who seeks to discontinue service on a common carrier basis and instead provide service on a non-common carrier basis, or who otherwise intends to reduce or impair service the carrier shall notify all affected customers of the planned discontinuance, reduction or impairment on or before the date that the licensee provides notice to the Commission pursuant to § 21.903(d).

(b) Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for

good cause shown, another form of notice. Notice shall include the following:

(1) Name and address of carrier; and

(2) Date of planned service discontinuance, reduction or impairment; and

(3) Points or geographic areas of service affected; and

(4) How many and which channels are affected.

17. Section 21.913 is amended by removing paragraph (e)(4) and redesignating paragraph (e)(5) as (e)(4), and revising paragraphs (a), (b), (e) introductory text, (e)(1), (e)(4)(i), (e)(4)(vi), and (h) to read as follows:

§ 21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.909(b)(7)(i)) at or beyond the boundary of the protected service area, as defined in §§ 21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) A licensee or conditional licensee may secure a license for a high power signal booster station that has a maximum EIRP in excess of −9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. The applicant for a high-power station, or for modification thereto, where not subject to § 21.41 or § 21.42, shall file FCC Form 331 with Mellon Bank, and certify on that form that the applicant has complied with the additional requirements of paragraph (b) of this section, and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of paragraph (b) of this section shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant additionally is required to submit to the Commission's copy contractor (and to the Commission upon staff request), both in hard copy, and on sequential 3.5″ DSHD computer diskettes in a form to be specified by the Commission by public notice, duplicates of the Form 331 filed with Mellon Bank, and the following information:

(1) A demonstration that the proposed signal booster station site is within the protected service area, as defined in §§ 21.902(d) and 21.933, of the MDS station whose channels are to be reused; and

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.907(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(3) In lieu of the requirements of § 21.902(c) and (i), a study which demonstrates that the proposed booster station will cause no harmful interference (as defined in § 21.902(f)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d), to any authorized or previously-proposed response station hubs, booster stations or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee or conditional licensee stating that it does not object to operation of the high-power MDS signal booster station may be submitted; and

(4) A description of the booster service area; and

(5) A demonstration either

(i) That the booster service area is entirely within the protected service area to which the licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(6) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee or conditional licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(3) of this section, and upon any affected holder of a Basic Trading Area or Partitioned Service Area authorization pursuant to paragraph (b)(2) of this section.

* * * * *

(e) Eligibility for a license for a low power signal booster station that has a maximum EIRP of −9 dBW +10log(X/6) dBW, where X is the channel width in MHz, shall be restricted to a licensee or conditional licensee. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. An MDS licensee or conditional licensee may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power MDS signal booster station. An MDS licensee or conditional licensee seeking to install a low-power MDS signal booster station under this rule must, within 48 hours after installation, submit FCC Form 331 to the Commission in Washington, DC, and submit to the Commission's copy contractor (and to the Commission upon staff request), both in hard copy, and on sequential 3.5″ DSHD computer diskettes in a format to be specified by public notice, duplicates of the Form 331 filed with the Commission, and the following (which also shall be

submitted to the Commission only upon Commission staff request at any time):

(1) A description of the booster service area; and

* * * * *

(4) * * *

(i) The maximum power level of the signal booster transmitter does not exceed −9 dBW + 10 log(X/6) dBW, where X is the channel width in MHz; and

* * * * *

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.907(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent channel signal booster station within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to remedy promptly all interference resulting from block downconverter overload at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by signal booster station licensees to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter interference at an MDS or ITFS receive site, such licensees shall cooperate in good faith to remedy promptly the interference.

§ 21.938 [Amended]

18. Section 21.938(b) is amended by removing §§ 21.940 and 74.940 and adding, in their place, §§ 21.949 and 74.949, respectively.

19. Section 21.949 is amended by revising paragraphs (a), (b) introductory text, and the first sentence of paragraph (d) and adding paragraph (b)(5) to read as follows:

§ 21.949 Individually licensed 125 kHz channel MDS response stations.

(a) The provisions of § 21.909(a), (e), (h), (j), (l) and (m) and § 74.939(j) of this chapter shall also apply with respect to authorization of 125 kHz channel MDS response stations not authorized under a response station hub license. The applicant shall comply with the requirements of § 21.902 and § 21.938 where appropriate, as well as with the provisions of §§ 21.909, 21.913, 74.939 and 74.985 of this chapter regarding the protection of response stations hubs and booster (and primary) service areas from harmful electromagnetic interference, using the appropriately adjusted interference protection values based upon the ratios of the bandwidths involved.

(b) An application for a license to operate a new or modified 125 kHz channel MDS response station not under a response station hub license shall be filed with Mellon Bank on FCC Form 331. The applicant shall supply the following information and certification on that form for each response station:

* * * * *

(5) A certification that all licensees and applicants appropriately covered under the provisions of (a), above, have been served with copies of the application.

* * * * *

(d) During breaks in communications, the unmodulated carrier frequency of an analog transmission shall be maintained within 35 kHz of the assigned frequency at all times. * * *

* * * * *

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

20. The authority for part 74 continues to read as follows:

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

§ 74.901 [Amended]

21. Section 74.901 is amended by adding the definition of ''Documented complaint'' to read as follows:

* * * * *

Documented complaint. A complaint that a party is suffering from non-consensual interference. A documented complaint must contain a certification that the complainant has contacted the operator of the allegedly offending facility and tried to resolve the situation prior to filing. The complaint must then specify the nature of the interference, whether the interference is constant or intermittent, when the interference began and the site(s) most likely to be causing the interference. The complaint should be accompanied by a videotape or other evidence showing the effects of the interference. The complaint must contain a motion for a temporary order to have the interfering station cease transmitting. The complaint must be filed with the Secretary's office and served on the allegedly offending party.

* * * * *

22. Section 74.902 is amended by revising the first sentence of paragraph (f) to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(f) An ITFS licensee or conditional licensee may apply to exchange evenly one or more of its assigned channels with another ITFS licensee or conditional licensee in the same system, or with an MDS licensee or conditional licensee in the same system, except that an ITFS licensee or conditional licensee may not exchange one of its assigned channels for MDS channel 2A. The licensees or conditional licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. * * *

* * * * *

23. Section 74.903 is amended by revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) introductory text, (a)(6) and the last sentence of paragraph (b) introductory text, and revising (b)(5) to read as follows:

§ 74.903 Interference.

(a) * * *

(1) Cochannel interference is defined as the ratio of the desired signal to the undesired signal, at the output of a reference receiving antenna oriented to receive the maximum desired signal level. Harmful interference will be considered present when a calculation using a terrain sensitive signal propagation model determines that this ratio is less than 45 dB (or the appropriate value for bandwidths other than 6 MHz.)

(2) * * *

(i) Harmful interference will be considered present when a calculation using a terrain sensitive signal propagation model determines that this ratio is less than 0 dB (or the appropriate value for bandwidths other than 6 MHz.)

(ii) In the alternative, harmful interference will be considered present for an ITFS station constructed before May 26, 1983, when a calculation using a terrain sensitive signal propagation model determines that this ratio is less than 10 dB (or the appropriate value for bandwidths other than 6 MHz), unless:

* * * * *

(6) Notwithstanding the above, main, booster and response stations shall use the following formulas, as applicable, for determining compliance with: (1) Radiated field contour limits where bandwidths other than 6 MHz are employed at stations utilizing digital emissions; and (2) Cochannel and adjacent channel D/U ratios where the bandwidths in use at the interfering and protected stations are unequal and both stations are utilizing digital modulation or one station is utilizing digital modulation and the other station is utilizing either 6 MHz NTSC analog modulation or 125 kHz analog modulation (I channels only).

(i) Contour limit: -73 dBW/m^2 + 10 log(X/6) dBW/m^2, where X is the bandwidth in MHz of the digital channel.

(ii) Co-channel D/U: 45 dB + 10 log(X_1/X_2) dB, where X_1 is the bandwidth in MHz of the protected channel and X_2 is the bandwidth in MHz of the interfering channel.

(iii) Adjacent channel D/U: 0 dB + 10 log(X_1/X_2), where X_1 is the bandwidth in MHz of the protected channel and X_2 is the bandwidth in MHz of the interfering channel.

(b) * * * An applicant for a new instructional television fixed station must include the following technical information with the application:

* * * * *

(5) Specific rules relating to response station hubs, booster stations, and 125 kHz channels are set forth in §§ 21.909, 21.913, 21.949, 74.939, 74.949 and 74.985. To the extent those specific rules are inconsistent with any rules set forth above, those specific rules shall control.

* * * * *

24. Section 74.911 is revised to read as follows:

§ 74.911 Processing of ITFS station applications.

(a) Applications for ITFS stations are divided into three groups:

(1) In the first group are applications for new stations. These applications are subject to the provisions of paragraph (c) of this section.

(2) In the second group are applications for major changes in the facilities of authorized stations. A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another, except as provided for in § 74.902(f), change polarization, increase the EIRP in any direction by more than 1.5 dB, increase the transmitting antenna height by 25 feet or more, or relocate a facility's transmitter site by 10 miles or more. Major change applications are subject to paragraphs (d) and (e) of this section.

(3) The third group consists of applications for all other licenses and all other changes in the facilities of authorized stations.

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(2) of this section, or results in a situation where the original party or parties to the application do not retain control of the applicant as originally filed. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) (1) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing ITFS applications for a new station. Such ITFS applicants shall be subject to the provisions of § 1.2105 and the ITFS competitive bidding procedures. *See* 47 CFR 73.5000, *et. seq.*

(2) The requirements of this section apply to a wireless cable entity requesting to be licensed on ITFS frequencies pursuant to § 74.990.

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be a one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for all major changes, high-power signal booster station, response station hub, and I channels point-to-multipoint transmissions licenses, during which all applications shall be deemed to have been filed as of the same day for purposes of §§ 74.939 and 74.985. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously-proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or conditional licensee or licensee of the station that would receive such additional interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for major changes, new or modified response station hub, high powered signal booster and booster station licenses may be filed and will be processed in accordance with the provisions of §§ 74.939 and 74.985. Each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

(e) Except as provided in paragraph (d) of this section, major change applications may be filed at any time. Except during the sixty (60) day amendment period provided for in paragraph (d) of this section, any amendment to a major change application that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility, or submits any interference consent from a neighboring licensee, shall cause the application to be considered newly-filed. Notwithstanding any other provision of part 74, major change applications meeting the requirements of part 74 shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the facilities proposed in the major change

application. A facility proposed in a major change application shall not be entitled to protection from interference caused by any facilities proposed on or prior to the day the major change application is filed. A facility proposed in a major change application shall not be required to protect from interference facilities proposed on or after the day the major change application is filed. Except as provided by paragraph (d) of this section, any petition to deny a major change application shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application. Except as provided in paragraph (d) of this section a major change application that meets the requirements of part 74 shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, unless prior to such date either a party in interest files a timely petition to deny or files for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted at such time. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the facility until such time as the Commission issues a license for that facility's operations.

25. Section 74.931 is amended by revising paragraphs (c)(3), (c)(6)(ii), (d) introductory text, (d)(1), (d)(6)(ii), and (d)(6)(iii) to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(c) * * *

(3) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can lease full-time channel capacity on its ITFS station and/or associated ITFS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. The licensee also retains the unabridgeable right to recapture, subject to six months' advance written notification by the ITFS licensee to its lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which leases excess capacity to an operator which utilizes digital transmissions on any one of the licensee's licensed channels may ''channel shift'' pursuant to and under the conditions of paragraph (d)(2) of this section.

(6) * * *

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(d) A licensee utilizing digital transmissions on any of its licensed channels may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not lease this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of ITFS educational usage. This 5% reservation and this 20 hours per licensed channel per week ITFS educational usage requirement shall apply spectrally over the licensee's whole actual service area.

* * * * *

(6) * * *

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (d)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1), 21.903(b)(2), 21.903(c), and 21.910 of this chapter.

* * * * *

26. Section 74.932 is amended by revising paragraph (a)(4) to read as follows:

§ 74.932 Eligibility and licensing requirements.

(a) * * *

(4) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a state educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage.

* * * * *

27. Section 74.935 is amended by revising the section heading, paragraphs (a) through (c) and by adding paragraph (e) to read as follows:

§ 74.935 EIRP limitations.

(a) The maximum EIRP of a main or booster station shall not exceed 33 dBW + 10log(X/6) dBW, where X is the actual bandwidth if other than 6 MHz, except as provided in paragraph (b) of this section.

(b) If a main or booster station sectorizes or otherwise uses one or more transmitting antennas with a non-omnidirectional horizontal plane radiation pattern, the maximum EIRP over a 6 MHz channel in dBW in a given direction shall be determined by the following formula:

EIRP = 33 dBW + 10 log(X/6) dBW + 10 log(360/beamwidth) dBW, where X is the channel width in MHz and 10 log(360/beamwidth) ≤ 6 dB.

Beamwidth is the total horizontal plane beamwidth of the individual transmitting antenna for the station or any sector measured at the half-power points.

(c) An increase in station EIRP, above currently-authorized or previously-proposed values, to the maximum values provided in paragraphs (a) and (b) of this section may be authorized, if an applicant demonstrates that the requested EIRP increase would not cause harmful interference to any authorized or previously-proposed, cochannel or adjacent channel station entitled to interference protection under the Commission's rules, or if an applicant demonstrates that:

(1) A station that must be protected from interference could compensate for interference by increasing its EIRP; and

(2) The interfered-with station may increase its own EIRP consistent with the rules and without causing harmful interference to any cochannel or adjacent channel main or booster station protected service area, response station hub or BTA/PSA, for which consent for the increased interference has not been obtained ; and

(3) The applicant requesting authorization of an EIRP increase agrees to pay all expenses associated with the increase in EIRP by the interfered-with station.

* * * * *

(e) For main, booster and response stations utilizing digital emissions with non-uniform power spectral density (*e.g.* unfiltered QPSK), the power measured within any 100 kHz resolution bandwidth within the 6 MHz channel occupied by the non-uniform emission cannot exceed the power permitted within any 100 kHz resolution bandwidth within the 6 MHz channel if it were occupied by an emission with uniform power spectral density, *i.e.*, if the maximum permissible power of a station utilizing a perfectly uniform power spectral density across a 6 MHz channel were 2000 watts EIRP, this would result in a maximum permissible power flux density for the station of 2000/60 = 33.3 watts EIRP per 100 kHz bandwidth. If a non-uniform emission were substituted at the station, station power would still be limited to a maximum of 33.3 watts EIRP within any 100 kHz segment of the 6 MHz channel, irrespective of the fact that this would result in a total 6 MHz channel power of less than 2000 watts EIRP.

28. Section 74.936 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 74.936 Emissions and bandwidth.

(a) An ITFS station may employ amplitude modulation (C3F) for the transmission of the visual signal and frequency modulation (F3E) or (G3E) for the transmission of the aural signal when transmitting a standard analog television signal. Quadrature amplitude modulation (QAM), digital vestigial sideband modulation (VSB), quadrature phase shift key modulation (QPSK), code division multiple access (CDMA) and orthogonal frequency division multiplex (OFDM) emissions may be employed, subject to compliance with the policies set forth in the *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996). Use of OFDM also is subject to the subsequently *Digital Declaratory Ruling and Order*, DA 99–554 (Mass Med. Bur. rel. Mar. 19, 1999). Other digital emissions may be added to those authorized above, including emissions with non-uniform power spectral density, if the applicant provides information in accordance with the guidelines and procedures set forth in the *Declaratory Ruling and Order* which clearly demonstrates the spectral occupancy and interference characteristics of the emission. The licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel, and may utilize all or a portion of its authorized bandwidth for ITFS response stations authorized pursuant to § 74.939. The licensee may also, jointly with affected adjacent channel licensees, transmit utilizing bandwidth in excess of its authorized frequencies, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in § 74.936 are met at the edges of the channels employed. The wider channels thus created may be redivided to create narrower channels.

(b) Notwithstanding the above, any digital emission which complies with the out-of-band emission restrictions of § 21.908 of this chapter may be used in the following circumstances:

* * * * *

29. Section 74.939 is amended as follows:

(1) by revising paragraph (b);

(2) revising paragraph (c);

(3) removing paragraph (d)(1);

(4) redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2);

(5) revising newly redesignated paragraphs (d)(2)(iii), (d)(2)(iv), (d)(2)(v) introductory text; (d)(2)(v)(A);

(6) revising the second sentence of paragraph (f);

(7) revising pargraphs (g)(3), (g)(6)(i), (g)(6)(ii), (g)(8);

(8) revising paragraph (h);

(9) revising paragraph (i)(2);

(10) revising the second sentence of paragraph (l)(1), (l)(2) introductory text;

(11) adding paragraph (l)(6);

(12) revising paragraph (m);

(13) revising paragraph (o);

(14) revising paragraph (p); and

(15) revising the first sentence of paragraph (q).

The additions, removals and revisions are set out as follows:

§ 74.939 ITFS response stations.

* * * * *

(b) ITFS response stations that utilize the 2150–2162 MHz band pursuant to § 74.902(f), the 2500–2686 MHz band, and/or the 125 kHz channels identified in paragraph (j) of this section may be installed and operated without an individual license, to communicate with a response station hub, provided that the conditions set forth in paragraph (g) of this section are met and that ITFS response stations' technical parameters are consistent with all applicable rules in this part and with the terms and conditions set out in the Commission's *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996).

(c) An applicant for a response station hub license, or for modification thereto, shall:

(1) File FCC Form 331 with the Commission in Washington, DC, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section and that the interference data submitted under paragraph (d) of this section is complete and accurate. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit the following to the Commission's copy contractor, both in hard copy and on sequential 3.5″ DSHD computer diskettes in ASCII for all Appendix D data and in a format to be specified by the Commission by public notice for all other submissions.

(i) Duplicates of the Form 331 filed with the Commission; and.

(ii) The data required by Appendix D to the *Report and Order on Reconsideration* in MM Docket No. 97–217, FCC 99–178, ''Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems'' as amended; and

(iii) The information, showings and certifications required by paragraph (d) of this section; and

(3) Submit to the Commission, only upon Commission staff request, duplicates of the submissions required by paragraph (c)(2) of this section.

* * * * *

(d) * * *

(2) * * *

(iii) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit towards their respective response station hubs and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant will not generate a power flux density in excess of −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 74.903(a)(6)(i)) outside the boundaries of the applicant's protected service area, as measured at locations for which there is an unobstructed signal path, except to the extent that consent of affected licensees has been obtained or consents have been granted pursuant to

paragraph (d)(3)(ii) of this section to an extension of the response service area beyond the boundaries of the protected service area; and

(iv) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 45 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 74.903(a)(6)(ii)):

(A) Within the protected service area of any authorized or previously-proposed cochannel MDS or ITFS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) Within the booster service area of any cochannel booster station entitled to such protection pursuant to §§ 21.913(f) of this chapter or 74.985(f) and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) At any registered receive site of any authorized or previously-proposed cochannel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee or applicant for such cochannel station or hub consents to the application; and

(v) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 0 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 74.903(a)(6)(iii)):

(A) Within the protected service area of any authorized or previously-proposed adjacent channel MDS or ITFS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

* * * * *

(f) * * * Except as provided in § 74.911(e), an application for a response station hub license that meets the requirements of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub pursuant to paragraph (d)(2)(i)(B) of this section for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate at an excess of 33 dBW + 10 log(X/6) dBW, where X is the channel width in MHz; and

* * * * *

(6) * * *

(i) First notifies the Commission, in a format to be specified by public notice, of the altered number of response stations of such class(es) to be operated simultaneously in such region, and certifies in that notification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section, and that the interference data submitted under paragraph (g)(6)(ii) of this section is complete and accurate; and

(ii) Provides the Commission's copy contractor with a set of sequential 3.5″ DSHD diskettes in ASCII format which update the previously filed response station data (see § 21.909(c)(2)(ii) of this chapter) and with an analysis, in a format to be specified by public notice, establishing that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 of this chapter or § 74.949; or that the applicant for or licensee of such facility has consented to such interference; and

* * * * *

(8) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent response station hub with a response service area within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a response station hub with an associated response station contributing to such interference shall bear the joint and several obligation to promptly remedy all block downconverter overload interference at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application for the response station hub license, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the response station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the response station hub licensee to prevent interference before constructing response stations and/or to remedy interference that may occur. In the event that the associated response station(s) of more than one response station hub licensee contribute(s) to block downconverter interference at an MDS or ITFS receive site, such hub licensees shall cooperate in good faith to remedy promptly the interference.

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

(i) * * *

(2) Commencing upon the filing of an application for an ITFS response station hub license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction is filed on FCC Form 330A, the ITFS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(i) and 21.938(b)(3) of this chapter and 74.903, and to protection of the response station hub pursuant to the preceding paragraph. Unless the application for the response station hub license specifies that the same frequencies also will be employed for digital and/or analog point-to-multipoint transmissions by ITFS stations and/or ITFS booster stations, upon the submission of a certification of completion of construction of an ITFS response station hub on FCC Form 330A where the channels of an ITFS station are being utilized as response station transmit frequencies, the ITFS station whose channels are being utilized for response station transmissions shall no longer be entitled to interference protection pursuant to §§ 21.902(i) and

21.938(b)(3) of this chapter and 74.903 within the response service area with regard to any portion of any 6 MHz channel employed solely for response station communications. Upon the submission of a certification of completion of construction of an ITFS response station hub on FCC Form 330A where the channels of an ITFS station are being utilized for response station transmissions and the application for the response station hub license specifies that the same frequencies will be employed for point-to-multipoint transmissions, the ITFS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(i) and 21.938(b)(3) of this chapter and 74.903, and to protection of the response station hub pursuant to the preceding provisions of this paragraph.

* * * * *

(l) * * *

(1) * * * The application shall specify which of the associated I channels is/are intended for point-to-multipoint transmissions, or whether an I channels station already authorized for point-to-multipoint transmissions is being modified. * * *

(2) Submit to the Commission's copy contractor, both in hard copy, and on a 3.5″ DSHD computer diskette in ASCII, and likewise submit to the Commission, only upon Commission staff request:

* * * * *

(6) A certification that copies of the materials set forth in paragraph (l)(2) of this section have been served upon the licensee or conditional licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (l)(3) of this section, and upon any affected holder of a Basic Trading Area or Partitioned Service Area authorization pursuant to paragraph (l)(2) of this section.

(m) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the hub licensee as often as necessary to ensure that it is functioning in accordance with the requirements of the Commission's rules. The licensee of a response station hub is responsible for the proper operation of all associated response station transmitters. Each response station hub licensee is responsible for maintaining, and making available to the Commission upon request, a list containing all customer names and addresses, plus the technical parameters (EIRP, emission, bandwidth, antenna pattern/height/orientation/polarization) pertinent to each class of response station within the response service area.

* * * * *

(o) An ITFS response station shall be operated only when engaged in communications with its associated ITFS response station hub or ITFS station or booster station, or for necessary equipment or system tests and adjustments. Upon initial installation, and upon relocation and reinstallation, a response station transmitter shall be incapable of emitting radiation unless, and until, it has been activated by reception of a signal from the associated ITFS station or booster station. A hub station licensee shall be capable of remotely de-activating any and all response station transmitters within its RSA by means of signals from the associated ITFS station or booster station. Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden.

(p) All response stations utilizing an EIRP greater than 18 dBW shall be installed by the associated hub licensee or by the licensee's employees or agents. For the purposes of this section, all EIRP dBW values assume the use of a 6 MHz channel. For channel bandwidths other than 6 MHz, the EIRP dBW values should be adjusted up (channel >6 MHz) or down (channel <6 MHz) by 10 log(X/6) dBW, where X is the channel width in MHz. For response stations located within 1960 feet of an ITFS receive site registered and built prior to the filing of the application for the hub station license, the hub licensee must notify the licensee of the ITFS receive site at least one business day prior to the activation of these response stations. The notification must contain, for each response station to be activated, the following information: name and telephone number of a contact person who will be responsible for coordinating the resolution of any interference problems; street address; geographic coordinates to the nearest second; channels/subchannels (transmit only); and transmit antenna pattern, EIRP, orientation and height AMSL. (If transmit antenna pattern, EIRP, orientation or height AMSL are not known with specificity at the time of notification, the hub licensee may, instead, specify the worst-case values for the class of response station being activated.) Such notice to the ITFS licensee shall be given in writing by certified mail unless the ITFS licensee has requested delivery by email or facsimile. The ITFS licensee may waive the notification requirement on a site-specific basis or on a system-wide basis. The notification provisions of this section shall not apply if:

(1) The response station will operate at an EIRP no greater than −6 dBW; or

(2) The response station will operate at an EIRP greater than −6 dBW and no more than 18 dBW and:

(i) The channels being received at the ITFS site are neither the same as, nor directly adjacent to, the channel(s) to be transmitted from the response station; and

(ii) The hub station licensee has replaced, at its expense, the frequency downconverters used at all ITFS receive sites registered and constructed prior to the filing of the hub station application which are within 1960 feet of the hub station's response service area; and

(iii) The downconverters, at a minimum, conform to the following specifications:

(A) A frequency of operation covering the 2150–2162 MHz band or the 2500–2686 MHz band; and

(B) A third-order intercept point of 30 dBm; and

(C) A conversion gain of 32 dB, or the same conversion gain as the existing ITFS downconverter, whichever is least; and

(D) A noise figure of no greater than 2.5 dB, or no more than 1 dB greater than the noise figure of the existing ITFS downconverter, whichever is greater; and

(iv) The proposal to upgrade the ITFS downconverter was made in writing and served upon the affected ITFS licensee, conditional licensee or applicant at the same time the application for the response station hub license was served on cochannel and adjacent channel ITFS parties and no objection was made within the 60-day period allowed for petitions to deny the hub station application.

(q) Interference calculations shall be performed in accordance with Appendix D to the *Report and Order on Reconsideration* in MM Docket No. 97–217, FCC 99–178, ''Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems'' as amended

* * *

30. Section 74.949 is amended by revising paragraphs (a), (b) introductory text, and by adding (b)(5) to read as follows:

§ 74.949 Individually licensed 125 kHz channel ITFS response stations.

(a) The provisions of § 74.939(a), (e), (h), (j), (k), (n) and (o) shall also apply with respect to the authorization of 125 kHz channel ITFS response stations not authorized under a response station hub

license. The applicant shall also comply with the requirements of § 74.903 and § 21.938 of this chapter where appropriate, as well as with the provisions of §§ 21.909 and 21.913 of this chapter and of §§ 74.939 and 74.985 regarding the protection of response station hubs and booster (and primary) service areas from harmful electromagnetic interference, using the appropriately adjusted interference protection values based upon the ratios of the bandwidths involved.

(b) An application for a license to operate a new or modified 125 kHz channel ITFS response station not under a response station hub license shall be filed with the Commission in Washington, D.C., on FCC Form 331. The applicant shall supply the following information and certification on that form for each response station:

* * * * *

(5) A certification that all licensees and applicants appropriately covered under the provisions of paragraph (a) of this section have been served with copies of the application.

* * * * *

31. Section 74.951 is amended by revising paragraph (b) to read as follows:

§ 74.951 Modification of transmission systems.

* * * * *

(b) Any change in the antenna system affecting the direction of radiation, directive radiation pattern, antenna gain, or radiated power; provided, however, that a licensee may install a sectorized antenna system without prior consent if such system does not change polarization or result in an increase in radiated power by more than one dB in any direction, and notice of such installation is provided to the Commission and the Commission's copy contractor on FCC Form 331 within ten (10) days of installation. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to this paragraph of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in degree of azimuth, with respect to true north, and the make and model of such antenna(s).

* * * * *

32. Section 74.961 is amended by revising paragraph (a) to read as follows:

§ 74.961 Frequency tolerance

(a) Beginning January 21, 2000, equipment authorized to be used at all ITFS main stations, and at all ITFS booster stations authorized pursuant to § 74.985(b), shall maintain a frequency tolerance of 0.001%. ITFS booster stations authorized pursuant to § 74.985(e) and ITFS response stations authorized pursuant to § 74.939 shall employ transmitters with sufficient frequency stability to ensure that the emission is, at all times, within the required emission mask. A transmitter licensed prior to November 1, 1991 that remains at the station site for which it was initially authorized and does not comply with the provisions of this paragraph may continue to be used if it does not cause harmful interference to the operations of any other licensee. Any non-conforming transmitter replaced after November 1, 1991 must be replaced by a transmitter meeting the requirements of this paragraph.

* * * * *

33. Section 74.985 is amended by:

(1) removing paragraph (e)(4);

(2) redesignating paragraph (e)(5) as (e)(4);

(3) revising paragraph (a);

(4) revising paragraphs (b) introductory text (b)(4), (b)(5);

(5) revising the second sentence of paragraph (d);

(6) revising paragraph (e) introductory text, newly redesignated paragraphs (e)(4)(i), (e)(4)(vi);

(7) revising paragraph (f); and

(8) revising paragraph (h).

The additions, removals and revisions are set out as follows:

§ 74.985 Signal booster stations.

(a) An ITFS booster station may reuse channels to repeat the signals of ITFS stations or to originate signals on ITFS channels. The aggregate power flux density generated by an ITFS station and all associated signal booster stations and all simultaneously operating cochannel response stations licensed to or applied for by the applicant may not exceed -73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 74.903(a)(6)(i)) at or beyond the boundary of the protected service area, as defined by § 21.902(d) of this chapter, of the main ITFS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the cochannel licensee is obtained.

(b) A licensee or conditional licensee may secure a license for a high power signal booster station that has a maximum EIRP in excess of -9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908 of this chapter. The applicant for a high-power station, or for modification thereto, shall file FCC Form 331 with the Commission in Washington, DC, and certify on that form that the applicant has complied with the additional requirements of paragraph (b) of this section, and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of paragraph (b) of this section shall result in dismissal of the application or revocation of the high-power ITFS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant additionally is required to submit to the Commission's copy contractor (and to the Commission upon staff request), both in hard copy, and on sequential 3.5″ DSHD computer diskettes in a form to be specified by the Commission by public notice, duplicates of the Form 331 filed with Mellon Bank, and the following information:

* * * * *

(4) A study which demonstrates that the aggregate power flux density of the ITFS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant does not exceed -73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 74.903(a)(6)(i)) at or beyond the boundary of the protected service area of the main ITFS station whose channels are to be reused, as measured at locations for which there is an unobstructed signal path, unless the consent of affected licensees has been obtained; and

(5) In lieu of the requirements of § 74.903, a study which demonstrates that the proposed signal booster station will cause no harmful interference (as defined in § 74.903(a)(1) and (2)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d) of this chapter, to any authorized or previously-proposed response station hubs, booster service areas, or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to

or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee or conditional licensee stating that it does not object to operation of the high-power ITFS signal booster station may be submitted; and

* * * * *

(d) * * * Except as provided in § 74.911(e), an application for a high-power ITFS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. * * *

(e) Eligibility for a license for a low power signal booster station that has a maximum EIRP of −9 dBW + 10log(X/6) dBW, where X is the channel width in MHz, shall be restricted to a licensee or conditional licensee. A low-power ITFS signal booster station may operate only on one or more ITFS channels that are licensed to the licensee of the ITFS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the ITFS conditional licensee or licensee. An ITFS licensee or conditional licensee may install and commence operation of a low-power ITFS signal booster station for the purpose of retransmitting the signals of the ITFS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power ITFS signal booster station. An ITFS licensee or conditional licensee seeking to install a low-power ITFS signal booster station under this rule must, within 48 hours after installation, submit FCC Form 331 to the Commission in Washington, DC, and submit to the Commission's copy contractor (and to the Commission upon staff request), both in hard copy, and on sequential 3.5″ DSHD computer diskettes in a format to be specified by public notice, duplicates of the Form 331 filed with the Commission, and the following (which also shall be submitted to the Commission only upon Commission staff request at any time):

* * * * *

(4) * * *

(i) The maximum power level of the signal booster transmitter does not exceed −9 dBW + 10 log(X/6) dBW, where X is the channel width in MHz; and

* * * * *

(vi) The aggregate power flux density of the ITFS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant does not exceed −73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 74.903(a)(6)(i)) at or beyond the boundary of the protected service area of the main ITFS station whose channels are to be reused, as measured at locations for which there is an unobstructed signal path, unless the consent of affected licensees has been obtained; and

(f) Commencing upon the filing of an application for a high-power ITFS signal booster station license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction on FCC Form 330A is submitted, an applicant for any new or modified MDS or ITFS station (including any response station hub, high-power booster station, or I channels station) shall demonstrate compliance with the interference protection requirements set forth in §§ 21.902(i) and 21.938(b)(3) of this chapter or § 74.903 with respect to any previously-proposed or authorized booster service area both using the transmission parameters of the high-power ITFS signal booster station (*e.g.*, EIRP, polarization(s) and antenna height) and the transmission parameters of the ITFS station whose channels are to be reused by the high-power ITFS signal booster station. Upon the submission of a certification of completion of construction on FCC Form 330A of an ITFS booster station applied for pursuant to paragraph (b) of this section, or upon the submission of an ITFS booster station notification pursuant to paragraph (e) of this section, the ITFS station whose channels are being reused by the ITFS signal booster shall no longer be entitled to interference protection pursuant to §§ 21.902(i) and 21.938(b)(3) of this chapter and § 74.903 within the booster service area based on the transmission parameters of the ITFS station whose channels are being reused. A booster station shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application or notification for the booster station is filed. A booster station shall not be required to protect from interference facilities proposed on or after the day the application or notification for the booster station is filed.

* * * * *

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent channel signal booster station within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to remedy promptly all interference resulting from block downconverter overload at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by signal booster station licensees to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter overload interference at an MDS or ITFS receive site, such licensees shall cooperate in good faith to remedy promptly the interference.

34. The alphabetical index to part 74 is amended by adding under the heading ''ITFS'' a ''Response stations hub'' heading and adding ''Response station hubs (ITFS; individually licensed)'' heading, to read as follows:

Alphabetical Index—Part 74

* * * * *

ITFS—

* * * * *

Response station hubs 74.939

* * * * *

Response stations (ITFS; individually licensed) 74.949

* * * * *

PART 101—FIXED MICROWAVE SERVICES

35. The authority for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309 and 554.

§ 101.149 [Amended]

36. Section 101.147 is amended by removing the number (22) from the entries 2,150–2,160 MHz (20) (22) and 2,650–2,690 MHz (22) from the frequency assignments in paragraph (a).

[FR Doc. 99–29785 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2476; MM Docket No. 92–81; RM 7875]

Radio Broadcasting Services; Farmington and Gallup, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by KOB–TV, Inc. against our action in the *Report and Order,* 61 FR 08000 (1996) which reallotted Channel 3 from Gallup to Farmington and modified the construction permit for Station KOAV–TV to specify Farmington as its community of license.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket 92–81, adopted October 27, 1999 and released November 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 99–30173 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2452; MM Docket No. 98–196; RM–9325 & RM–9476]

Radio Broadcasting Services; Whitewright and Van Alstyne,TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Petition for Rule Making filed by Chinquapin Creek Broadcasting Company, a Notice of Proposed Rule Making was issued proposing the allotment of Channel 260A at Whitewright, Texas. *See* 63 FR 67036, December 4, 1998. In response to a counterproposal filed by Chinquapin Creek Broadcasting this document allots Channel 260A to Van Alstyne, Texas, at coordinates 33–27–08 and 96–27–21. With this action, this proceeding is terminated. A filing window for Channel 260A at Van Alstyne, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–196, adopted October 27, 1999, and released November 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Van Alstyne, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–30169 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE54

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant *Lesquerella thamnophila* (Zapata Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the plant *Lesquerella thamnophila* (Zapata bladderpod) to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Lesquerella thamnophila* is currently known from four locations in Starr and Zapata Counties, Texas. Increased urban development, roadway construction, invasion of exotic species, increased oil and gas activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population numbers threaten this species.

EFFECTIVE DATE: This final rule is effective December 22, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (8:00 am to 4:30 pm, Monday through Friday), at the U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Texas A&M University-Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412.

FOR FURTHER INFORMATION CONTACT: Field Supervisor of the Corpus Christi Ecological Services Field Office at the

above address (Telephone 316–994–9005; Facsimile 361–994–8262).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella thamnophila, a member of the Brassicaceae (mustard) family, was first collected in Zapata County, Texas, by R. C. Rollins in 1959. The species was named *Lesquerella thamnophila* in 1973 by R.C. Rollins and E.A. Shaw in their work on the genus *Lesquerella* (Rollins and Shaw 1973). The few collected specimens of *Lesquerella thamnophila* have all come from Starr and Zapata Counties in southern Texas.

Lesquerella thamnophila is a pubescent (hairy), somewhat silvery-green herbaceous (herblike) perennial plant, with sprawling stems 43–85 centimeters (cm) (17–34 inches (in)) long. The plant exhibits a taproot system indicating a perennial life habit. It possesses narrow basal leaves 4–12 cm (1.5–4.8 in) long, and 7–15 millimeters (mm) (0.3–0.6 in) wide, with entire to wavy or slightly toothed margins. Stem leaves are 3–4 cm (1–1.5 in) long and 2–8 mm (0.1–0.3 in) wide, with margins similar to basal leaves. The inflorescences (arrangement of flowers on a single stalk) are loose racemes of bright yellow-petaled flowers (the flowers are arranged along an axis with the lower flowers maturing first), which appear at different times of the year depending upon timing of rainfall. Fruits are round and 4.5–6.5 mm (0.2–0.8 in) in diameter on short, downward curving pedicels (slender stalks) (Poole 1989).

Physical and climatic characteristics of Starr and Zapata Counties include level to rolling topography and an average of 45–51 cm (18–20 in) of precipitation, with major peaks of rainfall in September and May. Infrequent but heavy downpours associated with hurricanes and tropical storms contribute to wide fluctuations in rainfall from year to year, and skew the historical mean well above the yearly median. Drought, a recurring event in south Texas, has a profound effect on native vegetation. The range of *Lesquerella thamnophila* has been under an extreme drought situation for a number of years, making it likely that the plant would take advantage of any measure of rainfall to flower and reproduce. The numbers of plants present in known populations appear to fluctuate dramatically in response to precipitation (Poole 1989).

Lesquerella thamnophila can occur on graveled to sandy-loam upland terraces above the Rio Grande floodplain. The known populations are associated with three Eocene-age geologic formations—Jackson, Laredo, and Yegua, which have yielded fossiliferous (containing fossils) and highly calcareous (containing calcium carbonate) sandstones and clays.

Known Starr County populations occur within the Jimenez-Quemado soil association and on Catarina series soils. Jimenez-Quemado soils are well-drained, shallow, and gravelly to sandy loam underlain by caliche (a hard soil layer cemented by calcium carbonate). This soil association is broad, dissected, and irregularly shaped, and occurs on huge terraces 6–15 meters (20–50 feet) above the floodplains of the Rio Grande. In most areas, the Jimenez soils occupy the slope breaks extending from the tops of ridges to the bottoms of the slopes, and narrow valleys between. Quemado soils occur as narrow areas on ridgetops, where the slope range is 3–20 percent. Steep escarpments can be present with rocky outcrops adjacent to the river floodplain. Catarina series soils consist of clayey, saline upland soils developed from calcareous, gypsiferous (containing gypsum), and or saline clays that usually contain many drainages and erosional features. The underlying material of the soils contain calcareous concretions (a rounded mass of mineral matter), gypsum crystals, and marine shell fragments (Thompson *et al.* 1972).

Bladderpod populations in Zapata County occur within the Zapata-Maverick soil association. Zapata soils are shallow, loamy or mixed, hyperthermic (high temperature), well-drained, and nearly level with undulating slopes ranging from 0 to18 percent, primarily on uplands occurring over caliche. The upper portion of the soil horizon ranges 5–25 cm (2–10 in), with course fragments consisting of few to 25 percent of angular caliche 2.5–20 cm (1–8 in) long, and combined with chert gravel. Maverick soils consist of upland clayey soils occurring over caliche with underlying calcareous material containing shale and gypsum crystals (Thompson, *et al.* 1972). The upper zone consists of a moderately deep soft shale bedrock, sloping 1–10 percent, well-drained, and forming clayey sediments. Ancient deposition of rock material from the Rio Grande can be found in these portions of the soil, and rock and Indian artifact collection has become a pastime for residents and visitors in the area.

Lesquerella thamnophila occurs as an herbaceous component of an open *Leucophyllum frutescens* (cenizo) shrub community that grades into an *Acacia rigidula* (blackbrush) shrub community. Both plant communities dominate upland habitats on shallow soils near the Rio Grande (Diamond 1990). Other related plant species in the cenizo and blackbrush communities include *Acacia berlandieri* (guajillo), *Prosopis sp.* (mesquite), *Celtis pallida* (granjeno), *Yucca treculeana* (Spanish dagger), *Zizyphus obtusifolia* (lotebush), and *Guaiacum angustifolium* (guayacan). The coverage of an aggressively invasive, nonnative grass, *Cenchrus ciliaria* (buffelgrass), is extensive at three of the four extant sites and present at the fourth. *Dichanthium annulatum* (Kleberg's bluestem), which is used for erosion control on roadways, has also begun to invade natural areas and is present at all four *Lesquerella* sites, although not as extensively as buffelgrass. These shrublands are sparsely vegetated due to the shallow, fast-draining, highly erosional soils and semi-arid climate (Poole 1989).

Livestock production is one of the major land uses for the area, although wildlife rangeland production for hunting and recreational use is becoming increasingly important. Major game species include white-tailed deer (*Odocoileus virginianus*), quail (*Colinus virginianus* and *Callipepla squamata*), mourning dove (*Zenaida macroura*), turkey (*Meleagris gallopavo*), javelina (*Pecari tajacu*), and feral pig (*Sus scrofa*). Oil and natural gas production has become one of the most significant forms of income in the area due to a drought-induced decrease in cattle production.

Overgrazing by livestock, root-plowing of shrubs, and subsequent planting of buffelgrass for rangeland improvement has eliminated much of the natural habitat. Buffelgrass, the forage plant used by most ranchers in the area, has invaded natural areas and out-competed native plants. Results from various invasive grass studies indicate that there may be shade and root competition as well as possible allelopathic effects (suppression of growth of one plant species by another due to release of toxic substances) on native forbs and grasses (Nurdin and Fulbright 1990).

Lesquerella thamnophila occurred historically in Starr and Zapata Counties in the United States. We do not have information on Mexican populations, although we have contacted biologists and botanists in Mexico regarding its possible occurrence there and use as a medicinal plant. One response indicated that the plant was historically found in northern Mexico and was used as a poultice for open sores, wounds, and skin eruptions (Garcia *in Litt.* 1999).

Since the first collection of *Lesquerella thamnophila* in 1959, and nine additional populations of the plant

have been located since then. Of the ten total known populations, four are believed to have been extirpated, two populations have not been surveyed since 1996 due to restricted access to private lands, and four sites are known to support extant populations.

Sites Believed To Be Extirpated

R. C. Rollins originally discovered *Lesquerella thamnophila* in 1959 in Zapata County, in a subdivision near Falcon Lake. This type locality was relocated in 1985, when approximately 1,000 plants were seen within a 5-hectare (ha) (15-acre (ac)) area. In 1986, the site was under a drought condition, and no plants were found. Plants were located again in 1988, but the numbers of plants were not recorded. Biologists from the Texas Parks and Wildlife Department (TPWD) relocated the site in 1996, but saw no plants. Our personnel also found no plants in September 1998 or April 1999. The habitat at this site has become severely degraded. Soil has eroded into roadside ditches, buffelgrass has invaded the sloping hillside, and housing construction has eliminated much of the natural habitat of the area. The population has likely been extirpated from this site.

In 1994, a site along an electric transmission line in southwestern Starr County was reported, however, no specimen was collected, and no plants have been seen at this site since then. In 1996, we discovered another site consisting of about 50 plants, less than 1.6 kilometers (1 mile) northeast of the above-mentioned site along a roadside cut of Highway 83. Surveys for this population were performed in 1997–1999. In 1998, one plant was observed, and in 1999, we found no plants at this site. In 1995, we discovered a small site in the Highway 83 right-of-way south of the city of Zapata. The TPWD and Service biologists found one plant in 1998, but none were found in our April 1999 survey.

Extant Populations

In April 1994, TPWD personnel discovered a new Starr County population of about 50 plants. We purchased this site as part of the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) complex and began to monitor population numbers. In 1996, LRGVNWR biologists recorded a total of 131 plants, 84 of which exhibited no seedling productivity. In 1997, after high precipitation, the number of individuals increased to several thousand within an approximately 1-ha (2–3-ac) portion of the tract. In September 1998, we surveyed the site and found few individuals, but one plant had produced two fruits. The majority of plants seen were located under the canopy of associated brush species. Previous to the survey, high amounts of precipitation fell at the site, eroding soils, exposing the calcareous sandstone, and leaving the root structure of some *Lesquerella thamnophila* plants partially exposed. Where *Lesquerella thamnophila* individuals were protected by associated plants, topsoil was retained, and the species was less affected by heavy rains.

In April 1999, after resumption of drought conditions, only a few *Lesquerella thamnophila* plants were found. However, in June we visited the site after 10–15 cm (4–6 in) of rain had fallen in the area and observed a large number of *Lesquerella thamnophila* plants flowering and producing fruit. During a survey one week later, few flowers, but many pods at various stages of development, were present. Close inspection of the plants revealed possible predation on seeds within developed pods. Botanists at the LRGVNWR are currently conducting habitat and community structure studies of *Lesquerella thamnophila* and associated species present at this site. The studies include investigations on habitat composition and productivity in relation to shade effects, relationships with other plant species, and the degree of successful species propagation.

Another historical site in Zapata County, originally reported by Lundell and Lundell in 1941, was re-verified by TPWD in 1985 (Poole 1989). Approximately 5,000 plants were found in this area on the east side of Highway 83 located near the Arroyo Tigre Chiquito bridge. In 1986, during drought conditions, only 28 plants were seen. Plants were again located in 1988, but no counts recorded. The TPWD and the Texas Department of Transportation (TDOT) established a management agreement to protect the site, and we and TPWD monitor this population annually. The TPWD recorded 10 reproductive plants in 1991, no plants in 1992, and 7 nonreproductive plants in 1995. No plants were found during 1996–1998 surveys, however, TDOT biologists found five plants at the site in 1999.

In 1996, TPWD discovered about 100 plants in a vacant lot near the Siesta Shores Subdivision in Zapata County, and in January 1998, located many rosettes (plants whose leaves are spread flat at ground level). We found one plant in July 1999, but extensive housing construction had begun, which eliminated much of the potential habitat. The population at the site could be extirpated unless conservation measures can be implemented in the very near future.

In 1986, TPWD found 20 plants on a 2-ha (5-ac) tract of a privately owned ranch in southwestern Starr County (Poole 1989). The TPWD personnel observed the species again in 1994 but did not count individuals. The TPWD biologists observed 20 or fewer individuals in 1996. In 1999, the site was confirmed to support plants, but no information is available on the number of plants observed.

Populations for Which Status Is Unknown

Three Starr County populations, including the one above, were known from private ranch sites near the towns of Roma and Los Saenz. Two of the private ranch sites have not been visited by us or TPWD personnel because we do not have permission to access these sites. Therefore, we do not know the status of *Lesquerella thamnophila* at these sites.

Previous Federal Action

Federal action involving this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. The report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and announcing that we would initiate a review of the status of those plants. *Lesquerella thamnophila* was included as threatened in the Smithsonian report and in our notice.

On June 16, 1976 (41 FR 24523), we published a proposed rule to determine approximately 1,700 species of vascular plants as endangered. *Lesquerella thamnophila* was included in this proposal. However, the 1978 amendments to the Act required the withdrawal of all proposals over 2 years old (although a 1-year grace period was allowed for those proposals already over 2 years old). On December 10, 1979 (44 FR 70796), we published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final.

On December 15, 1980 (45 FR 82823), we published a list of plants under review for listing as threatened or endangered, which included *Lesquerella thamnophila* as a category 2 candidate. ''Category 2 candidates'' were those

species for which available information indicated listing as threatened or endangered may have been appropriate, but for which substantial data were not available to support preparation of a proposed rule.

Section 4(b)(3)(B) of the Act requires that we make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The 1975 Smithsonian report was accepted as a petition, and all the plants noted within the report, including *Lesquerella thamnophila*, were treated as being newly petitioned on October 13, 1982. In each subsequent year from 1983 to 1993, we determined that listing *Lesquerella thamnophila* was warranted, but precluded by other listing actions of higher priority, and that additional data on vulnerability and threats were still being compiled.

A status report on *Lesquerella thamnophila* was completed August 8, 1989 (Poole 1989). That report provided sufficient information on biological vulnerability and threats to warrant designating the species as a category 1 candidate and to support preparation of a proposed rule to list *Lesquerella thamnophila* as endangered. "'Category 1 candidates'" were those species for which we had substantial information indicating that listing under the Act was warranted.

Notices revising the 1980 list of plants under review for listing as endangered or threatened were published in the **Federal Register** on September 27, 1985 (50 FR 39626), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51171). *Lesquerella thamnophila* was included in the September 30, 1993, notice as a category 1 candidate.

Upon publication of the February 28, 1996, Notice of Review (61 FR 7605), we ceased using category designations and included *Lesquerella thamnophila* as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered species. We retained *Lesquerella thamnophila* as a candidate species in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398). On January 22, 1998 (63 FR 3301), we published a proposed rule to list *Lesquerella thamnophila* as endangered, without critical habitat, in the **Federal Register**. We invited the public and State and Federal agencies to comment on the proposed listing.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

The January 22, 1998, proposed rule and associated notification requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We published newspaper notices of the proposed rule in the Brownsville Herald on February 4, 1998; the Monitor (McAllen), the Valley Morning Star (Harlingen), the Rio Grande City Herald, and the Zapata News on February 5, 1998; and the February monthly issue of LareDOS (Laredo). The public comment period was open for 60 days, from January 22 to March 23, 1998.

Five commenters, including the State and four individuals or groups, commented on the proposed rule. Three commenters opposed the listing; one commenter was neutral on listing; and one supported the listing. Issues raised by the commentors are discussed below.

Issue 1: The listing of the plant poses a threat to landowners who earn their livelihood by cattle ranching or oil and gas production. Listing would also threaten the success of the North American Free Trade Agreement (NAFTA) by postponing construction of various roadways within south Texas.

Response: The Act prohibits us from considering economic and other nonbiological factors in listing decisions. However, once a species is listed, we strive to minimize adverse economic impacts when considering how best to conserve listed species. The Act provides protection to listed plant species when landowners seek Federal permits, funding, or Federal loans for a land development project or other activities that may affect the species. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities (such as road building) they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. Early coordination with State and Federal agencies can help minimize economic impacts and avoid unnecessary delays in project implementation.

Endangered plants are not protected on private lands except when taken in knowing violation of a State law or regulation, including State criminal trespass law. However, we hope that listing the species will alert private landowners to the need to protect it and encourage them to work with us to develop conservation measures that will benefit both the landowner and the species.

Issue 2: Additional surveys should be performed after rain events, and biological information should be gathered prior to listing, possibly to preclude listing.

Response: Extirpations at historical sites and the apparent decline of extant *Lesquerella thamnophila* populations necessitates protecting the few known surviving plants under the Act. Should additional surveys and biological data indicate that the populations are more viable than most recently demonstrated, we would consider that information in formulating a recovery strategy for the species. Although the decrease in population number and size appears correlated with drought conditions, it is not known whether the remaining populations would rebound sufficiently following future rain events to justify not listing the species. Furthermore, delaying the listing process would increase the risk that more bladderpod populations would disappear. Because there are only four known populations scattered over a large geographical area, each loss decreases genetic variability and reduces the chances of the species' survival even after normal rainfall returns. The best scientific and commercial information available indicates that the species' existence is too precarious to delay the protections afforded by the Act.

Peer Review

Our July 1, 1994, Peer Review Policy (59 FR 34270) requires that we solicit

the opinions of at least three independent specialists regarding pertinent scientific or commercial data on proposed species listings. We provided the proposed rule to 29 botanists and biologists outside the Service and asked for their review of the proposed action. We received responses from three biologists. Two supported listing the species and provided corrections to the proposed rule and other information. One respondent opposed listing on the grounds that further surveys would likely reveal additional populations, however, this scientist agreed that current information supports listing the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determined that *Lesquerella thamnophila* should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and the regulations implementing the listing provisions of the Act (50 CFR part 424). We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella thamnophila* (Zapata bladderpod) (Rollins and Shaw), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction and modification are the primary threats to *Lesquerella thamnophila*. These threats include the introduction of nonnative pasture grasses, such as buffelgrass, and conversion of native rangeland to improved pasture, overgrazing, urban development, construction or improvement of highways and utility transmission systems necessary to support urban infrastructures, and oil and gas exploration and production. These types of activities have destroyed or altered more than 95 percent of the native habitat in south Texas (Jahrsdoerfer and Leslie 1988).

A common practice in south Texas to improve rangeland for livestock production is to remove native shrubs through root-plowing or aerial herbicide application and then re-seeding the area with nonnative grasses. This practice potentially destroys *Lesquerella thamnophila* and its habitat. Buffelgrass has spread beyond improved pastureland and is now present throughout a large portion of south Texas. This invasive nonnative grass outcompetes and displaces native grasses, herbs, and small shrubs. Possible mechanisms for displacement of native species by invasive nonnatives could be loss of sites for native plant seedling establishment, light and moisture competition, and possibly allelopathic effects (Nurdin and Fulbright 1990).

Much of south Texas has been affected by long-term grazing, and grazing continues to be an established practice on private lands. Vegetation of the semi-arid south Texas climate is less resilient to the impacts of long-term grazing than is the vegetation of wetter climates. This situation has led to severe depletion of the often highly erodible south Texas soils (Schlesinger, *et al.* 1990). It is impossible to calculate how much habitat occupied by Zapata bladderpod may have been lost due to the effects of long-term grazing and conversion of native rangeland to improved pasture.

Lesquerella thamnophila is also threatened by potential urban development. Habitat at the type locality for this species has been reduced to a small vacant lot in a resort subdivision near Falcon Reservoir in the City of Zapata, Texas. This area is undergoing rapid development. Another *Lesquerella thamnophila* population, which had occurred in an abandoned trailer park, has disappeared. The current trend toward urbanization, including increased construction of convenience stores in the area, could extirpate remaining populations.

South Texas is experiencing a rapid increase in highway improvements and construction to handle increased traffic stimulated by NAFTA. Existing roads that may be proposed for widening and/or paving lie adjacent to *Lesquerella thamnophila* populations. In addition, nonnative Kleberg's bluestem (*Dichanthium annulatum*) is used for errosion control, and that species is present at the known *Lesquerella* sites.

South Texas is presently undergoing a significant increase in oil and gas exploration and production, especially in Zapata and Starr Counties. All phases of exploration and production have the potential to impact *Lesquerella thamnophila* populations and habitat. Seismic exploration requires clearing of extensive, temporary rights-of-way to facilitate equipment traffic. The construction of well pads, access and egress roads, electrical lines, and petroleum gathering lines from wells, if not planned properly, may destroy native habitat. The re-seeding of nonnative grasses in pipeline rights-of-way not only hampers re-colonization by native species but further spreads invasive species that will displace native vegetation.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although reported to have medicinal values, the species is not known to be a product in commercial trade.

C. *Disease or predation.* The populations of *Lesquerella thamnophila* have shown no evidence of disease. However, Poole (1989) reports that cattle graze *Lesquerella* to the extent that numbers of plants in populations subjected to grazing are severely reduced compared to those in adjacent, ungrazed lands. In addition, our biologists surveying for the plant at a site owned and protected by the LRGVNWR found evidence of browsing by native animal species on the plants. While consumption by herbivores is a natural event, browsing can be a greater threat during drought conditions when range quality is reduced and other forage species have been reduced or removed. The small number of extant sites and the low number of plants can result in greater susceptibility to browsing than likely was present when populations were at historical levels. The plants in this portion of south Texas are sensitive to browsing during drought conditions due to the semi-arid environment and the sparseness of vegetation, even under ideal range conditions. Additionally, biologists have discovered evidence of predation on seed material of Zapata bladderpod during status surveys.

D. *The inadequacy of existing regulatory mechanisms.* The species is not currently protected by any Federal or State laws or regulations.

E. *Other natural or man-made factors affecting its continued existence.* *Lesquerella thamnophila* populations adjacent to maintained highway rights-of-way are exposed to herbicides used to control vegetation around bridges, guardrails, signs, and reflector posts. Maintenance crews may also use herbicides to kill woody species encroaching into the rights-of-way and along fence lines. Any plants within these areas are also threatened by maintenance practices such as blading, disking, and re-seeding with erosion control seed mixtures that contain primarily non-native invasive grasses.

Only four known *Lesquerella thamnophila* populations are known to exist, and these have widely fluctuating numbers of plants from year to year. The low plant numbers usually seen in these populations during drought years can result in genetic drift which can restrict genetic variability reducing the species' ability to overcome environmental stresses. The reduced number of plants during drought years, with populations

in some areas falling to zero above-ground vegetative individuals, also makes the species vulnerable to extinction from prolonged drought situations. The extreme rarity of this species makes populations vulnerable to extirpation and extinction from the variety of random environmental events mentioned, as well as human exploitation of its habitat.

In finalizing this rule, we carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species. Based on this evaluation, the preferred action is to list *Lesquerella thamnophila* as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate because of the species' limited distribution, low population numbers, and imminent threats of habitat destruction. Threatened status would not accurately reflect the current status of this species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Lesquerella thamnophila* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Lesquerella thamnophila* would be prudent.

Due to the small number of populations, *Lesquerella thamnophila* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Lesquerella thamnophila* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Lesquerella thamnophila*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, ''The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year.'' As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Lesquerella thamnophila* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Lesquerella thamnophila* without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Lesquerella thamnophila* as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, preservation programs, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, as well as by private organizations and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that all Federal agencies use their authorities to carry out programs for the conservation of all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as threatened or endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with us.

Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, brush clearing for flood control in arroyos within the jurisdiction of the International Boundary and Water Commission; technical assistance to landowners by the Natural Resource Conservation Service (formerly Soil Conservation Service) for activities funded by the Consolidated Farm Service Agency (formerly Agricultural Stabilization and Conservation Service); and rangeland herbicide or pesticide registration by the Environmental Protection Agency. The Federal Highway Administration will need to consider the occurrence of the species in activities such as widening existing roadways, or constructing new highways, as well as some maintenance practices. The U.S. Department of Housing and Urban Development will need to consider this species when it permits or funds water, sewer, and power services for settlements. The Federal Energy Regulatory Commission will need to consider the occurrence of the species when it approves interstate pipelines and electrical transmission lines, especially in previously undisturbed natural areas.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce any such plant species; or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of such plants on areas under Federal jurisdiction; and the removal, cutting, digging up, or damaging or destroying of such plants in any other area, including non-Federal lands, in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Fish and Wildlife Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued because this species is not in cultivation nor common in the wild.

Our policy (59 FR 34272) is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

We believe that, based on the best information available at this time, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing laws and regulations, including State laws and regulations, and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, construction or maintenance of pipelines or utility lines), when conducted in accordance with any reasonable and prudent measures given by us in a consultation under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., birding, sightseeing, photography, camping, or hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

We believe that the following might result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Collection, damage, or destruction of *Lesquerella thamnophila* on Federal lands without a Federal permit. *Lesquerella thamnophila* occurs on Federal lands under our jurisdiction.

(2) Collection, damage, or destruction of this species on non-Federal land if conducted in knowing violation of State law or regulations, or in the course of any violation of a State criminal trespass law.

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits are available for purposes of scientific research and enhancement or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Corpus Christi Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to—U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, PO Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920; facsimile 505–248–6922).

National Environmental Policy Act

We determined we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. 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. This rule does not alter that information collection requirement.

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Thompson, C.M., R.R. Sanders, and D. Williams. 1972. Soil Survey of Starr County, Texas. U.S. Department of Agriculture. Soil Conservation Service, Temple, Texas.

Authors:

The primary authors of this document are Loretta Pressly, Kathy Nemec, and Angie Brooks. Major contributors to this document are Robyn A. Cobb and Ernesto Reyes (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Lesquerella thamnophila.	Zapata bladderpod	U.S.A. (TX)	Cruciferae	E	671	N/A	N/A
*	*	*	*	*	*	*	

Dated: November 16, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–30378 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 64, No. 224
Monday, November 22, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–293–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 and 727C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 and 727C series airplanes. This proposal would require one-time inspections of the exterior body skin located at the forward corners of the mid-galley door hinge cutouts to detect cracking, and corrective actions, if necessary. This proposal also would require modification of the body skin of the mid-galley door hinge cutouts. This proposal is prompted by a report indicating that, during fatigue testing on a Boeing Model 727 series airplane, a crack was found in the body skin at the lower forward corners of the mid-galley door hinge cutouts due to cabin pressurization cycles. The actions specified by the proposed AD are intended to prevent such fatigue cracking of the body skin, which could result in reduced structural integrity of the fuselage and consequent loss of cabin pressurization.

DATES: Comments must be received by January 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–293–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Linda Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–293–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–293–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during fatigue testing on a Boeing Model 727 series airplane, a crack was found in the body skin at the lower forward corners of the mid-galley door hinge cutouts. The crack was attributed to fatigue induced by cabin pressurization cycles. Such cracking, if not corrected, could result in reduced structural integrity of the fuselage and consequent loss of cabin pressurization.

Other Related Rulemaking

On January 16, 1990, the FAA issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), applicable to certain Boeing Model 727 series airplanes, which currently requires the incorporation of certain structural modifications specified by Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727.'' That Boeing document references numerous Boeing service bulletins that specify various modification actions that are mandated by AD 90–06–09. That AD was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that were approaching or had exceeded their design life goal. The actions required by that AD are intended to prevent a degradation in the structural capabilities of the affected airplanes, which could result in structural failure. That action also reflects the FAA's decision that long-term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

Since issuance of that AD, the FAA has determined that the same unsafe condition addressed in that AD may exist on certain additional Model 727 and 727C series airplanes. The FAA was advised that three Model 727 and 727C series airplanes (line numbers 153, 290, and 339) were omitted inadvertently from the applicability of AD 90–06–09 because those airplanes had been excluded inadvertently from the effectivity of Section I.A. of Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989. Therefore, these additional airplanes are also subject to the same unsafe condition addressed in AD 90–06–09.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0054,

Revision 1, which describes a modification to the corners of the hinge cutouts and provides a top kit and instructions for installing doublers. Procedures include a close (detailed) visual inspection and a high-frequency eddy current (HFEC) inspection of the forward upper and lower corners of the mid-galley door hinge cutouts for cracks in the body skin. If no cracks are found, procedures specify either a modification, which includes modifying cutout corners and installing doublers, or a reinspection at ''C'' check intervals until accomplishment of the modification. If cracks are within specified repair limits, procedures include stop-drilling cracks, modifying cutout corners, and installing doublers. If cracks exceed specified repair limits, procedures specify contacting the manufacturer for repair instructions. Accomplishment of the modification is intended to increase the fatigue life of the body skin adjacent to the forward corners of the mid-galley door hinge cutouts.

The procedures specified by Revision 1 of the service bulletin are essentially the same as those procedures included in Boeing Document D6–54860, Revision C, as cited in AD 90–06–09, and the procedures specified in the original issue of Boeing Service Bulletin 727–53–0054.

Accomplishment of the actions specified in AD 90–06–09 is acceptable for compliance with the requirements of this proposed AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 1 of the service bulletin described previously, except as described below in the Differences section of this AD.

Since this AD expands the applicability of AD 90–06–09, the FAA has considered a number of factors in determining whether to issue a new AD or to supersede the ''old'' AD. Although the three additional airplanes included in the applicability of this proposed AD were inadvertently omitted from Boeing Service 727–53–0054, numerous other service bulletins referenced in Boeing Document No. D6–54860, Revision C, (cited in AD 90–06–09) included those additional airplanes in the effectivity. The FAA also has considered the entire fleet size that would be affected by superseding AD 90–06–09 and the consequent workload associated with revising maintenance record entries. In light of this, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This proposed AD would not supersede AD 90–06–09; airplanes listed in the applicability of AD 90–06–09 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to Boeing Model 727 and 727C series airplanes, line numbers 153, 290, and 339; certificated in any category.

Differences Between Proposed AD and Relevant Service Information

Operators should note that the proposed AD differs from Boeing Service Bulletin 727–53–0054, Revision 1, as follows:

- The effectivity of Revision 1 includes Model 727–100 series airplanes, line positions 1 through 474 inclusive. However, the applicability of this proposal includes Model 727 and 727C series airplanes, line numbers 153, 290, and 339 inclusive, which were inadvertently omitted from AD–90–06–09.
- Although Revision 1 specifies that, in certain cases, repetitive inspections may be performed in lieu of a modification, this proposal does not allow such action. Instead, this proposal would require accomplishment of a repair and modification if cracking is detected, or a modification if no cracking is detected. The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed repair and modification requirement is in consonance with these conditions.
- Paragraph III.C. of the Accomplishment Instructions of Revision 1 specifies that if any crack is found that is greater than 1.00 inch, the manufacturer must be contacted for repair instructions. However, this proposal requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.
- Figure 1 of Revision 1 specifies a ''close visual inspection'' of the body skin at the forward corners of mid-galley door hinge cutouts. However, this AD would require a ''detailed visual inspection'' of the body skin at those locations.

Cost Impact

There are approximately 1,516 airplanes of the affected design in the worldwide fleet. The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the required inspections of the body skin at the corners of the mid-galley door hinge cutouts, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $180, or $60 per airplane.

The FAA also estimates that it would take approximately 28 work hours per airplane to accomplish the repair and modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,023 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,109, or $2,703 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–293–AD.

Applicability: Model 727 and 727C series airplanes, line numbers 153, 290, and 339 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the body skin at the forward corners of the mid-galley door hinge cutouts, which could result in reduced structural integrity of the fuselage and consequent loss of cabin pressurization, accomplish the following:

One-Time Inspections

(a) Prior to the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time detailed visual inspection and a high frequency eddy current inspection of the exterior body skin located adjacent to the forward corners of the mid-galley door hinge cutouts for cracking in accordance with Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Repairs and Modification

(1) If no cracking is found during any inspection, prior to further flight, modify the body skin at the forward corners of the mid-galley door hinge cutouts, in accordance with Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989. No further action is required by this AD.

(2) If any cracking is found during any inspection, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If any crack is less than or equal to 1.00 inch, accomplish the repair and modification in accordance with Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989. No further action is required by this AD.

(ii) If any crack is greater than 1.00 inch, accomplish the repair and modification in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. No further action is required by this AD.

Note 3: Accomplishment of the actions required by AD 90–06–09, amendment 39–6488, is considered acceptable for compliance with this AD.

Alternative Method of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on November 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30372 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–314–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This proposal would require modifications of the engine turbine cooling air panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel, and monitoring system for the engine turbine air temperature. This proposal is prompted by reports of an undetected fire breaching the high speed gearbox (HSGB) case on certain Rolls Royce engines installed on in-service airplanes due to lack of an internal fire detection system within the HSGB. The actions specified by the proposed AD are intended to prevent undetected fires originating within the HSGB from breaching the HSGB case, which could result in engine damage and increased difficulty in extinguishing a fire.

DATES: Comments must be received by January 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–314–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aircraft & Logistics

Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063 fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–314–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–314–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of an undetected fire breaching the high speed gear box (HSGB) case on Rolls Royce Model RB211–22B and -524 series engines installed on all Lockheed Model L–1011–385 series airplanes due to lack of an internal fire detection system within the HSGB. Investigation has revealed that an internal failure (*i.e.*, principally bearing failure) in the engine HSGB induces combustion of the lubricating oil in the gearbox. This fire can eventually burn through the gearbox housing, which is the first point where it becomes detectable with the current fire detection system. After shutting down the engine subsequent to a fire warning, the windmilling engine core will still supply sufficient air to the HSGB to sustain combustion. Undetected HSGB fires due to lack of an internal fire detection system within the HSGB, could result in engine damage and increased difficulty in extinguishing a fire.

Other Relevant Rulemaking

On June 26, 1997, the FAA issued AD 97–14–07, amendment 39–10065 (62 FR 35951, July 3, 1997), applicable to certain Lockheed Model L–1011 series airplanes equipped with Rolls Royce RB211–524 engines, to require various modifications and corrective actions to prevent a potential fire hazard from an undetected gearbox fire.

On April 21, 1998, the FAA issued AD 98–09–23, amendment 39–10504 (63 FR 23382, April 29, 1998), applicable to certain Lockheed Model L–1011 series airplanes equipped with Rolls Royce RB211–22B engines, to require various modifications and corrective actions to prevent a potential fire hazard from an undetected gearbox fire.

However, this proposed AD would not affect the current requirements of those previously issued AD's.

Explanation of Relevant Service Information

The FAA has reviewed and approved Lockheed Service Bulletin 093–77–059, dated February 25, 1998, and Revision 1, dated February 2, 1999. The service bulletin describes procedures for modifications to the engine turbine cooling air panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel, and monitoring system for the engine turbine air temperature. The modification to the engine turbine cooling air panel involves installation of a HSGB overheat (OVHT) marker. The modification to the pilot's caution and warning light panel on the main instrument panel involves renaming the pilot's caution and warning light panel ''TURB AIR OVHT ENG 1'' indicator light to ''TURB AIR / HSGB ENG 1'', ''TURB AIR OVHT ENG 2'' to ''TURB AIR / HSGB ENG 2,'' and ''TURB AIR OVHT ENG 3'' to ''TURB AIR / HSGB ENG 3.'' The modification to the monitoring system for the engine turbine air temperature involves installation of a revised breather duct assembly for the HSGB; installation of two overheat detectors in the gearbox breather duct assembly; wiring modifications to the fancase/A-frame to engine core services loom assembly; installation of a spiral anti-chafe sleeve over the modified fancase/A-frame; and installation of additional clipping brackets for the wiring modifications. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Lockheed Service Bulletin 093–77–059 refers to Rolls Royce Service Bulletins RB.211–72–C178, dated March 20, 1998; and RB.211–77–C144, dated August 7, 1998; as additional sources of service information for accomplishment of the modification to the monitoring system for the engine turbine air temperature.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Lockheed Service Bulletin 093–77–059 described previously.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed modifications, and that the average labor rate is $60 per work hour.

Required parts would cost approximately $6,350 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $911,430, or $7,790 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed: Docket 98–NM–314–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected fires originating within the high speed gearbox (HSGB) from breaching the HSGB case, which could result in engine damage and increased difficulty in extinguishing a fire, accomplish the following:

Modification

(a) Within 24 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Lockheed Service Bulletin 093–77–059, dated February 25, 1998; or Revision 1, dated February 2, 1999.

(1) Modify the engine turbine cooling air panel at the flight engineer/second officer's console.

(2) Modify the pilot's caution and warning light panel on the main instrument panel.

(3) Modify the monitoring system for the engine turbine air temperature.

Note 2: Lockheed Service Bulletin 093–77–059 refers to Rolls Royce Service Bulletins RB.211–72–C178, dated March 20, 1998; and RB.211–77–C144, dated August 7, 1998; as additional sources of service information for accomplishment of the modification of the monitoring system for the engine turbine air temperature.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane, an engine turbine cooling air panel assembly, part number 1559672, or a pilot's caution and warning light panel assembly on the main instrument panel, unless it has been modified in accordance with paragraphs (a)(1) and (a)(2) of this AD, as applicable.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on November 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30371 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–85–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped With Cargo Doors Installed in Accordance With Supplemental Type Certificate (STC) SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –300 series airplanes, that currently requires repetitive inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main deck cargo door, and replacement of cracked parts. This action would add a requirement for installation of redesigned lower jamb latch support angles in the main cargo door surround structure, which would terminate the repetitive inspections. This proposal is prompted by the development of a modification that will provide better protection of the subject area against effects of structural fatigue. The actions specified by the proposed AD are intended to prevent in-flight separation of the main deck cargo door from the airplane due to fatigue cracking on the support angles on the lower door jamb.

DATES: Comments must be received by January 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pemco Aeroplex, Inc., P.O. Box 2287, Birmingham, Alabama 35201–2287. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown

Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Manager, Airframe and Propulsion Branch, ACE–117A; FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–85–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 29, 1994, the FAA issued AD 95–01–06, amendment 39–9117 (60 FR 2323, January 9, 1995), as revised by AD 95–01–06 R1, amendment 39–9449 (60 FR 62192, December 5, 1995), applicable to certain Boeing Model 737–200 and –300 series airplanes [those equipped with main deck cargo doors installed in accordance with supplemental type certificate (STC) SA2969SO]. That AD requires repetitive visual inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main deck cargo door, and replacement of cracked parts with new parts. That action was prompted by reports of premature fatigue cracking on the support angles on the lower jamb of the main deck cargo door. The requirements of that AD are intended to prevent in-flight separation of the main deck cargo door from the airplane due to fatigue cracking on the support angles on the lower door jamb.

Actions Since Issuance of Previous Rule

When the FAA originally issued AD 95–01–06R1, it was noted in the preamble that the AD was considered interim action until final action was identified, at which time the FAA might consider further rulemaking. Since the issuance of that AD, the STC holder for the cargo door airplane modification has generated a design change for the lower latch lug fitting support angles for the main cargo door surround structure. This design change, consisting of the installation of new lower jamb latch support angles in the main cargo door surround structure, would eliminate the need for the repetitive inspections (as required by AD 95–01–06R1). Upon consideration, the FAA has determined that installation of the design change is necessary to correct the unsafe condition addressed by AD 95–01–06R1.

The FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed design change requirement is in consonance with these considerations.

The actions specified by the proposed AD are intended to prevent in-flight separation of the main deck cargo door from the airplane due to fatigue cracking on the support angles on the lower door jamb.

Explanation of Relevant Service Information

The FAA has reviewed and approved Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995, and Revision 5, dated March 25, 1999, which describe, among other things, procedures for installation of new, improved lower jamb latch support angles in the main cargo door surround structure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–01–06 R1 to continue to require the repetitive visual inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main deck cargo door, and replacement of cracked parts with new parts. The proposed AD would also add a requirement for accomplishment of the design change specified in the service bulletins described previously, which would terminate the repetitive visual inspections. The actions would be required to be accomplished in accordance with the service information described previously, except as discussed below.

The FAA has clarified the inspection requirement contained in AD 95–01–06 R1. Whereas that AD specified a visual inspection, the FAA has revised this proposed AD to clarify that its intent is to require a detailed visual inspection. Additionally, a note has been added to the proposed rule to define that inspection.

Differences Between Proposed Rule and Service Information

Operators should note that, unlike the procedures described in Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994, this proposed AD would not permit further flight if cracks are detected in the affected area of the cargo door installation. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any affected area of the cargo door installation that is found to be cracked must be repaired or modified prior to further flight.

Cost Impact

There are approximately 32 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 95–01–06 R1 and retained in this proposed AD takes approximately 8 work hours per

airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

The new installation that is proposed in this AD action would take approximately 500 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,700 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $79,400, or $39,700 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9449 (60 FR 62192, December 5, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–85–AD. Supersedes AD 95–01–06 R1, Amendment 39–9449.

Applicability: Model 737–200 and –300 series airplanes equipped with main deck cargo doors installed in accordance with supplemental type certificate (STC) SA2969SO, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight separation of the main deck cargo door from the airplane, accomplish the following:

Note 2: This AD references Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994; Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995; and Pemco Service Bulletin 737–53–0003, Revision 5, dated March 25, 1999; for information concerning inspection and replacement procedures. In addition, this AD specifies replacement requirements different from those included in the service letter or service bulletin. Where there are differences between the AD and the service letter or service bulletin, the AD prevails.

Restatement of Requirements of AD 95–01–06R1, Amendment 39–9449

Repetitive Inspections

(a) Within 50 flight cycles after January 24, 1995 (the effective date of AD 95–01–06, amendment 39–9117), or within 50 flight cycles after installation of STC SA2969SO, whichever occurs later, perform a detailed visual inspection to detect cracking in the radii on the support angles on the lower jamb of the main deck cargo door, in accordance with Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight cycles.

(2) If any cracking is detected, prior to further flight, replace the cracked part with a new part in accordance with the alert service letter. Repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight cycles.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required.''

New Requirements of This AD

Terminating Action

(b) Within 1,500 flight cycles after the effective date of this AD, install redesigned lower jamb latch lug support angles in the main cargo door surround structure in accordance with Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995, or Revision 5, dated March 25, 1999. This action constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(c)(2) Alternative methods of compliance, approved previously in accordance with AD 95–01–06 R1, amendment 39–9449, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

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

Issued in Renton, Washington, on November 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30370 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model DHC–7–100 series airplanes. This proposal would require repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed visual inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, this proposal also would provide a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight.

DATES: Comments must be received by December 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–107–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model DHC–7–100 series airplanes. TCCA advises that fatigue cracks have been reported in the door stop fittings mounted on the baggage door. Failure of a door stop fitting would appreciably degrade the structural integrity of the baggage door installation. This condition, if not corrected, could result in structural failure, and consequent rapid decompression of the airplane during flight.

Explanation of Relevant Service Information

Bombardier has issued de Havilland Temporary Revision (TR) 5–100, dated December 23, 1998, for Supplementary Inspection Task 52–1 to the de Havilland Dash 7 Maintenance Manual PSM 1–7–2. The service information describes procedures for repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; and repetitive detailed visual inspections to detect cracks of the inner door structure on all four door locking attachment fittings. TCCA classified this service information as mandatory and issued Canadian airworthiness directive CF–99–03, dated February 22, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below. The proposed AD also would require corrective actions to be accomplished in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2. The corrective actions, for certain cases, involve replacement of any cracked fitting or housing with a new fitting or housing, as applicable. For certain other

cases, the corrective actions involve replacement of any cracked structure with a new support structure, or repair as described below. In lieu of accomplishing the corrective actions, this proposal also would provide a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard.

Differences Between Proposed Rule and Service Information

Operators should note that, although the service information specifies that the manufacturer may be contacted for disposition of certain cracks, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the TCCA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the TCCA would be acceptable for compliance with this proposed AD.

Interim Action

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

Cost Impact

The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,760, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99–NM–107–AD.

Applicability: All Model DHC–7–100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight, accomplish the following:

Repetitive Inspections

(a) At the latest of the times specified in paragraphs (a)(1) and (a)(2) of this AD, perform a high frequency eddy current inspection to detect fatigue cracks of the locking pin fittings of the baggage door and locking pin housings of the fuselage; and a detailed visual inspection to detect fatigue cracks of the inner door structure on all four locking attachment fittings of the baggage door; in accordance with de Havilland Temporary Revision (TR) 5–100, dated December 23, 1998, for Supplementary Inspection Task 52–1 to the de Havilland Dash 7 Maintenance Manual PSM 1–7–2. Thereafter, repeat the inspections at intervals not to exceed 1,000 flight cycles.

(1) Inspect prior to the accumulation of 12,000 total flight cycles.

(2) Inspect within 600 flight cycles or 3 months after the effective date of this AD, whichever occurs later.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, as applicable, except as provided in paragraph (c) of this AD. For operators that elect to accomplish the actions specified in paragraph (c) of this AD: After accomplishment of the replacement required by paragraph (b)(1) or (b)(2) of this AD, the AFM revision and placard required by paragraph (c) of this AD may be removed.

(1) If a crack is detected in a baggage door locking pin fitting or fuselage locking pin housing: Replace the fitting or housing with a new fitting or housing, as applicable, in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2.

(2) If a crack is detected in the inner baggage door structure at the locking attachment fittings: Replace the structure with a new support structure in accordance with de Havilland Dash 7 Maintenance Manual PSM 1–7–2, or repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, or the Transport Canada Civil Aviation (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(c) For airplanes on which only one baggage door stop fitting or its support structure is found cracked at one location, and on which the pressurization system ''Dump'' function is operational: Prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

Within 1,000 flight cycles after accomplishment of the requirements of paragraphs (c)(1) and (c)(2) of this AD, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) Revise the Limitations Section of the FAA-approved DHC–7 Airplane Flight Manual (AFM), PSM 1–71A–1A, to include the following statement. This AFM revision may be accomplished by inserting a copy of this AD into the AFM.

Flight is restricted to unpressurized flight below 10,000 feet mean sea level (MSL). The airplane must be operated in accordance with DHC–7 AFM, PSM 1–71A–1A, Supplement 20.

(2) Install a placard on the cabin pressure control panel or in a prominent location that states the following:

DO NOT PRESSURIZE THE AIRCRAFT UNPRESSURIZED FLIGHT PERMITTED ONLY IN ACCORDANCE WITH DHC–7 AFM PSM 1–71A–1A, SUPPLEMENT 20 FLIGHT ALTITUDE LIMITED TO 10,000 FEET MSL OR LESS.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–99–03, dated February 22, 1999.

Issued in Renton, Washington, on November 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30369 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–355–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737, 757, 767, and 777 series airplanes. This proposal would require a one-time general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin; and corrective action, if necessary. This proposal is prompted by a report that passengers were unable to activate supplemental oxygen generators during an in-flight decompression due to stress corrosion cracking of the crimped copper alloy ferrules used to secure loops on the lanyard ends. The actions specified by the proposed AD are intended to prevent failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants.

DATES: Comments must be received by January 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–355–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P. O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Susan J. Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2670; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–355–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–355–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that passengers on a Boeing Model 767 series airplane were unable to activate supplemental oxygen generators during an in-flight decompression due to failure of the oxygen mask lanyards when the masks were pulled after deployment. Failure of the oxygen mask lanyards has been attributed to stress corrosion cracking of the crimped copper alloy ferrules used to secure loops on the lanyard ends. This condition, if not corrected, could result in failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants.

The subject oxygen mask lanyards on Boeing 737, 757, and 777 series airplanes are similar to those on the affected Boeing 767 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletins 737–35–1049, dated September 17, 1998, including Appendix A (for Model 737 series airplanes); 757–35–0014, dated

September 10, 1998, including Appendix A (for Model 757 series airplanes); 767–35–0033, dated September 10, 1998 including Appendix A (for Model 767 series airplanes); and 777–35–0005, dated September 3, 1998, including Appendix A (for Model 777 series airplanes). These service bulletins describe procedures for a one-time general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin, and replacement of all lanyards on masks manufactured by Puritan-Bennett between May 1986 and July 1998 inclusive, with new lanyards which incorporate crimped metal ferrules that are not susceptible to stress corrosion cracking. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the referenced service bulletins recommend accomplishing the inspection at the next maintenance period (2C) when the oxygen mask drop test is scheduled, the FAA has determined that this interval would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a 4-year compliance time for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 4,547 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,206 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 26 work hours (for Model 737 series airplanes), 38 work hours (for Model 757 series airplanes), 44 work hours (for Model 767 series airplanes), and 52 work hours (for Model 777 series airplanes) per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Required parts would cost approximately $576 (for Model 737 series airplanes), $846 (for Model 757 series airplanes), $990 (for Model 767 series airplanes), and $1,170 (for Model 777 series airplanes). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,849,424, or $2,136 per airplane (for Model 737 series airplanes); $1,744,308, or $3,126 per airplane (for Model 757 series airplanes); $1,016,400, or $3,630 per airplane (for Model 767 series airplanes); and $145,860, or $4,290 per airplane (for Model 777 series airplanes).

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–355–AD.

Applicability: Model 737 series airplanes, line numbers 1 through 2984 inclusive; Model 757 series airplanes, line numbers 1 through 798 inclusive; Model 767 series airplanes, line numbers 1 through 682 inclusive; and Model 777 series airplanes, line numbers 1 through 083 inclusive; certificated in any category; and equipped with Puritan-Bennett passenger and flight attendant oxygen masks, as listed in Boeing Service Bulletins 737–35–1049, dated September 17, 1998; 757–35–0014, dated September 10, 1998; 767–35–0033, dated September 10, 1998; or 777–35–0005, dated September 3, 1998; as applicable.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the supplemental oxygen system to deliver oxygen to the passengers and flight attendants in the event of decompression, which could result in injury to passengers and flight attendants, accomplish the following:

Inspection

(a) Within 4 years after the effective date of this AD, perform a general visual inspection to determine the vendor and manufacturing date of all oxygen masks in the passenger cabin in accordance with Boeing Service Bulletin 737–35–1049, dated September 17, 1998, including Appendix A (for Model 737 series airplanes); Boeing Service Bulletin 757–35–0014, dated September 10, 1998, including Appendix A (for Model 757 series airplanes); Boeing Service Bulletin 767–35–0033, dated September 10, 1998, including Appendix A

(for Model 767 series airplanes); or Boeing Service Bulletin 777–35–0005, dated September 3, 1998, including Appendix A (for Model 777 series airplanes); as applicable.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action

(b) If the oxygen mask is manufactured by Puritan-Bennett between May 1986 and July 1998 inclusive: Prior to further flight, replace the lanyards on the masks with new lanyards in accordance with Boeing Service Bulletins 737–35–1049, dated September 17, 1998, including Appendix A (for Model 737 series airplanes); 757–35–0014, dated September 10, 1998, including Appendix A (for Model 757 series airplanes); 767–35–0033, dated September 10, 1998, including Appendix A (for Model 767 series airplanes); or 777–35–0005, dated September 3, 1998, including Appendix A (for Model 777 series airplanes); as applicable.

Spares

(c) As of the effective date of this AD, no person shall install an oxygen mask manufactured by Puritan-Bennett between May 1986 and July 1998 inclusive, on any airplane, unless the lanyard has been replaced with a new lanyard in accordance with paragraph (b) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on November 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30368 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–246–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 series airplanes. This proposal would require replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. This proposal is prompted by reports of burning and smoldering blankets in the forward crew rest area due to a reading light fixture that came into contact with the blankets after the light was inadvertently left on. The actions specified by the proposed AD are intended to prevent a possible flammable condition, which could result in smoke and fire in the crew rest area.

DATES: Comments must be received by January 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–246–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that burning and smoldering blankets were found in the forward crew rest area on McDonnell Douglas Model MD–11 series airplanes. Investigation revealed that a reading light fixture came into contact with the blankets after the light was inadvertently left on. This condition, if not corrected, could result in smoke and fire in the crew rest area.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999, which describes procedures for

replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. The redesigned light fixture allows a halogen light bulb with lower wattage to be recessed within the fixture to avoid any contact with combustible materials. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM-MD11–25–2, Revision C, dated March 8, 1999; as an additional source of service information for accomplishment of the replacement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Cost Impact

There are approximately 71 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $238 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,172, or $298 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 99–NM–246–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible flammable condition, which could result in smoke and fire in the crew rest area, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the upper and lower reading lights in the forward crew rest area with a redesigned light fixture, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999.

Note 2: McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM-MD11–25–2, Revision C, dated March 8, 1999; as an additional source of service information for accomplishment of the replacement of the upper and lower reading light in the forward crew rest area.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on November 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30367 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–19]

Proposed Establishment of Class E Airspace; Scammon Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Scammon Bay, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Scammon Bay Airport have made this action necessary. The Scammon Bay Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Scammon Bay, AK.

DATES: Comments must be received on or before January 6, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–19, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AAL–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Scammon Bay, AK, due to the establishment of two GPS instrument approach procedures. The intended effect of this proposal is to provide controlled airspace for IFR operations at Scammon Bay, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Scammon Bay, AK [New]

Scammon Bay Airport
(Lat. 61°50′40″ N., long. 165°34′26″ W.)
Hooper Bay VOR
(Lat. 61°30′52″ N., long. 166°08′04″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Scammon Bay Airport and that airspace extending upward from 1,200 feet above the surface within a 42-mile radius of the Hooper Bay VOR extending clockwise between the 006° radial and 066° radial.

* * * * *

Issued in Anchorage, AK, on November 5, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–30122 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–55]

Proposed Modification of Class E Airspace; Connersville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Connersville, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 18, and a GPS SIAP to Rwy 36, have been developed for Mettel Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before January 3, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–55, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–55.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Connersville, IN, to accommodate aircraft executing the proposed GPS Rwy 18 SIAP, and the GPS Rwy 36 SIAP, at Mettel Field Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Connersville, IN [Revised]

Connersville, Mettel Field Airport, IN
(Lat. 39°41′57″ N., long. 85°07′53″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Mettel Field Airport, excluding

that airspace within the New Castle, IN, and Richmond, IN, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on November 4, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–30395 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–104939–99]

RIN 1545–AX13

Definition of Last Known Address

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations defining ''last known address'' in relation to the mailing of notices of deficiency and other notices, statements, and documents sent to a taxpayer's last known address. The proposed regulations affect taxpayers who receive notices of deficiency and other notices, statements, and documents sent to taxpayers' last known addresses.

DATES: Written or electronic comments and requests for a public hearing must be received by February 22, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–104939–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104939–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to http://www.irs.gov/tax__regs/regslist.html (the IRS Internet site).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Michael Slaughter, (202) 622–7180; concerning the regulations, Charles A. Hall, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In General

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6212(b) relating to the sufficiency of a notice of deficiency if it is mailed to the last known address of a taxpayer. This document also contains proposed amendments to the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301) to provide cross-references to the proposed last known address rules under section 6212(b) in order to apply those rules to other notices, statements, and documents required to be sent to the last known address of a taxpayer.

Last Known Address

Many statutory and regulatory provisions refer to the last known address of a taxpayer. However, current law with respect to the last known address of a taxpayer has developed under section 6212(b), relating to the address for mailing a notice of deficiency. Generally, under section 6501, the IRS has three years from the date a Federal tax return is filed, or the due date for the return if the return is filed early, to assess a deficiency. Under section 6213, the IRS may not assess or collect a deficiency until after the notice of deficiency has been mailed to the taxpayer giving the taxpayer an opportunity to petition the United States Tax Court. Under section 6212(b), an otherwise valid notice of deficiency is sufficient if it is mailed to the taxpayer's last known address, even if it is not received by the taxpayer.

The term *last known address* is not defined by statute or current regulations. However, case law defines *last known address* as the ''address which appears on the taxpayer's most recently filed return, unless [the IRS] has been given clear and concise notification of a different address.'' *Abeles* v. *Commissioner*, 91 T.C. 1019, 1035 (1988), *acq.* 1989–2 C.B. 1. The taxpayer's most recently filed return for this purpose is the last return filed by the taxpayer from which, if the return was properly processed, the address on the return was available to the IRS agent mailing a notice of deficiency. *Id.* at 1035.

The taxpayer provides the IRS with clear and concise notification of a change of address by affirmatively informing the IRS that the former address is not to be used. See *King* v. *Commissioner*, 857 F.2d 676, 681 (9th Cir. 1988); *Monge* v. *Commissioner*, 93 T.C. 22, 32 (1989). Although the IRS must exercise due diligence in ascertaining the last known address and in mailing the notice of deficiency to the correct address after having become aware of a taxpayer's change of address, that duty does not require the IRS to change the taxpayer's last known address based on information from third party sources. See *Grencewicz* v. *Commissioner*, 60 T.C.M. (CCH) 1300, 1302 (1990). Accordingly, under current law, clear and concise notification does not include taxpayer notification to third parties, such as payors or the United States Postal Service (USPS). See *Adams* v. *Commissioner*, 68 T.C.M. (CCH) 291, 294 (1994), *aff'd sub nom.*, *Miller* v. *Commissioner*, 76 A.F.T.R.2d (RIA) 95–5903 (10th Cir. 1995) (forwarding order filed with USPS not clear and concise notice to IRS); *Selman* v. *Commissioner*, 61 T.C.M. (CCH) 2184, 2186 (1991) (USPS change of address form not notice to IRS because no evidence IRS received form); *Martin* v. *Commissioner*, 64 T.C.M. (CCH) 1529, 1531 (1992) (citing *Selman*); *Grencewicz* v. *Commissioner*, 60 T.C.M. (CCH) 1300, 1302 (1990) (IRS not required to review Forms 1099 and Schedule K–1); *Greenstein* v. *Commissioner*, 60 T.C.M. (CCH) 379, 382 (1990) (Forms W–2G and Form 1099–DIV not sufficient notice).

Current IRS Procedures for Changing Last Known Address

The IRS has prescribed rules for providing clear and concise notification of a different address in Rev. Proc. 90–18 (1990–1 C.B. 491). Under Rev. Proc. 90–18, a taxpayer must give clear and concise written notification of a change of address to the Internal Revenue Service Center that serves the taxpayer's old address or to the Chief, Taxpayer Service Division, in the local district office. The revenue procedure applies to notices required to be sent to a taxpayer's last known address under sections 982(c)(1), 6110(f)(3)(B), 6212(b), 6303(a), 6325(f)(2)(A), 6331(d)(2)(C), 6332(b)(1), 6335(a) and (b), 6901(g), and 7609(a)(2). Rev. Proc. 90–18, section 2.01. Although not included in Rev. Proc. 90–18, section 6110(f)(4)(B) also requires a notice to be sent to a taxpayer's last known address. Since publication of Rev. Proc. 90–18, four new sections have been added to the Code that reference last known address. See sections 6245(b)(1), 6320(a)(2)(C), 6330(a)(2)(C), and 7603(b)(1). Future updates of Rev. Proc. 90–18 will incorporate these new sections, as well as section 6110(f)(4)(B).

Under section 5.04 of Rev. Proc. 90–18, taxpayers may provide the IRS with clear and concise notification of a different address in one of three ways. First, a taxpayer may send the IRS a signed statement informing the IRS that the taxpayer wants the address of record

changed to a new address. In addition to the new address, this notification must contain the taxpayer's full name, signature, old address, and social security number and/or employer identification number. Filers of a joint return should provide both names, social security numbers, and signatures. Individuals who have changed last names, for instance, due to marriage, should provide the last name shown on the most recently filed return and the new last name. In all cases, clear and concise written notification must be specific as to a change of address. Thus, a new address reflected in the letterhead of taxpayer correspondence will not by itself change a taxpayer's address of record.

Second, if the IRS sends correspondence to the taxpayer that solicits or requires a response by the taxpayer and the taxpayer returns the correspondence to the IRS with corrections marked on the taxpayer's address information, the return of the correspondence will constitute clear and concise written notification of a change of address. The taxpayer's signature on the correspondence is not required.

Third, the taxpayer may file a Form 8822, ''Change of Address,'' with the IRS.

In addition to the rules prescribed in Rev. Proc. 90–18, the IRS currently accepts oral notification of a different address, provided the request is made in the context of an inquiry about the taxpayer's account. Courts have acknowledged the validity of oral notification of a change of address for purposes of last known address under section 6212(b), provided the notification is sufficiently clear, is given to a proper representative of the IRS, and is established by competent proof. See *Mollet* v. *Commissioner*, 82 T.C. 618, 625–26 (1984). Future updates of Rev. Proc. 90–18 will permit the oral notification of a change of address.

Explanation of Provisions

The proposed regulations define last known address consistent with the definition set forth in *Abeles*. Accordingly, the proposed regulations provide that the taxpayer's last known address is the address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the IRS is given clear and concise notification of a different address.

The proposed regulations also provide that the IRS will use an address obtained from the United States Postal Service (USPS) as a taxpayer's last known address in the absence of a more recent address. Although current law does not require the IRS to treat a taxpayer's notification to a third party, such as a payor or the USPS, as clear and concise notification of a different address for purposes of determining a last known address, the IRS and the Treasury Department are not prohibited from prescribing a rule that would allow the IRS to consult a third party source for the taxpayer's most current address.

Thus, the proposed regulations provide that beginning in May 2000, the IRS will refer to the USPS's National Change of Address (NCOA) database to obtain a taxpayer's address for purposes of determining the taxpayer's last known address. The proposed regulations also provide that the rules for last known address under § 301.6212–2 apply for purposes of other notices, statements, and documents mailed by the IRS to a taxpayer's last known address pursuant to the Internal Revenue Code or regulations. In addition, the regulations propose to amend existing regulations that use the term ''last known address'' to cross reference the regulations to § 301.6212–2.

NCOA Database

The NCOA database is a computerized record of changes of address maintained by the USPS. This database retains address changes for a thirty-six month period. USPS obtains the change of address information from a properly submitted USPS Form 3575, ''Official Mail Forwarding Change of Address Form.'' Both businesses and individuals use the Form 3575. Individuals may indicate whether the change of address applies to the individual or, if applicable, the individual's entire family.

Updating Master File

In May 2000, and again in November 2000, and annually thereafter in each November, the Martinsburg Computing Center (MCC) in Martinsburg, West Virginia, will access the NCOA database to update all taxpayer address records maintained in the IRS's automated master file for purposes of updating the IRS's mailing list. Generally, if the taxpayer's name and the last known address maintained in the automated master file match the taxpayer's name and old mailing address contained in the NCOA database, within certain tolerances, the IRS will use the new address obtained from the NCOA database to update the automated master file. The updated address will be the taxpayer's last known address, unless the IRS is given clear and concise notification of a different address. However, due to IRS system limitations, if taxpayers file jointly, but the NCOA database contains change of address information for only one spouse, the earliest this rule will apply is January 2001. The IRS will publish further guidance as to when this rule will apply to these joint filers.

In addition, beginning in May 2000, prior to mailing correspondence to any particular taxpayer from an IRS Service Center, the IRS will access the NCOA database to determine if the taxpayer submitted a Form 3575 to the USPS with a more recent address. If so, the following will occur: (1) The correspondence will be mailed to the address obtained from the NCOA database, and (2) the IRS will use the new address from the NCOA database to update the automated master file. This updated address will be the taxpayer's last known address. Similar to the exception relating to the annual update, however, this rule will not be effective any earlier than January 2001 if taxpayers file jointly, but the NCOA database contains change of address information for only one spouse.

If the taxpayer subsequently files a return with an address other than the address on the Form 3575, the taxpayer's last known address will be the address on the subsequently filed and properly processed return. Similarly, if the taxpayer submits a Form 8822, ''Change of Address,'' (or other clear and concise notification of a change of address) to the IRS after the taxpayer submits a Form 3575 to the USPS, the taxpayer's last known address will be the address on the Form 8822 (or on the clear and concise notification). In each instance, the IRS's master file will be updated to reflect the taxpayer's new last known address.

The IRS will not access the NCOA database prior to mailing correspondence from district offices and posts of duty. Unlike Service Centers, these locations do not have the systems capability to check the NCOA database for individual mailings at this time. Instead, the IRS will use the address stored in the automated master file. For purposes of correspondence mailed from district offices and posts of duty, the address on the IRS automated master file, as updated through the use of the NCOA database, will be the taxpayer's last known address.

Using the NCOA database will increase customer service by allowing faster delivery of IRS correspondence to a taxpayer. Rather than mailing correspondence to an address which is no longer a taxpayer's address and relying on the USPS to forward mail to the taxpayer's most recent address, the IRS will mail the correspondence

directly to the taxpayer's most recent address. In addition, by updating the automated master file with the most recent address, future IRS correspondence will be mailed to the taxpayer's most recent address.

Although use of the NCOA database will result in improved delivery in most cases, such use does not completely eliminate the taxpayer's need to provide the IRS with clear and concise notification of a different address. For instance, if the taxpayer changes the address of a residence or business and submits a Form 3575 with the USPS, but does not wish to change the taxpayer's address for purposes of IRS correspondence, then the taxpayer must notify the IRS as provided in Rev. Proc. 90–18. It should be noted, however, that even if the taxpayer notifies the IRS to continue using the old address for IRS correspondence, the USPS may forward the correspondence to the address on the USPS Form 3575.

Licensing Agreement with USPS

To gain access to the NCOA database, the IRS has applied to the USPS to become a limited licensee of the NCOA database. As a limited licensee, the IRS will receive from the USPS a copy of the entire thirty-six month NCOA database and periodic updates thereto in electronic format. The USPS will not have access to confidential return information as a result of this process. Moreover, unlike organizations that have entered into general licensing agreements with the USPS for use of the NCOA database, the IRS will not provide name and address matching services to commercial customers. Rather, the IRS will only use the NCOA database to update taxpayers' addresses maintained in the automated master file in the manner prescribed by these regulations. The IRS and the Treasury Department invite comments regarding whether the IRS should become a licensee for the limited purpose of updating its automated master file.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Charles A. Hall, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.468A–5, paragraph (c)(1)(ii) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.468A–5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

* * * * *

(c) * * *

(1) * * *

(ii) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

Par. 3. Sectioni 1.503(a)–1 is amended by adding a sentence at the end of the concluding text of paragraph (c) to read as follows:

§ 1.503(a)–1 Denial of exemption to certain organizations engaged in prohibited transactions.

* * * * *

(c) * * *

* * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

Par. 4. In § 1.547–2, paragraph (b)(1)(v) is amended by adding a sentence after the third sentence of the paragraph to read as follows:

§ 1.547–2 Requirements for deficiency dividends.

* * * * *

(b) * * *

(1) * * *

(v) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. * * *

* * * * *

Par. 5. In § 1.856–6, paragraph (g)(5) is amended by adding a sentence after the first sentence of the paragraph to read as follows:

§ 1.856–6 Foreclosure property.

* * * * *

(g) * * *

(5) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. * * *

* * * * *

Par. 6. In § 1.860–2, paragraph (b)(1)(ii) is amended by adding a sentence after the fourth sentence of the paragraph to read as follows:

§ 1.860–2 Requirements for deficiency dividends.

* * * * *

(b) * * *

(1) * * *

(ii) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. * * *

* * * * *

Par. 7. In § 1.963–6, paragraph (c)(5) is amended by adding a sentence after the second sentence of the paragraph to read as follows:

§ 1.963–6 Deficiency distribution.

* * * * *

(c) * * *

(5) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. * * *

* * * * *

Par. 8. In § 1.992–3, paragraph (c)(3)(iv) is amended by adding a sentence after the third sentence of the paragraph to read as follows:

§ 1.992–3 Deficiency distributions to meet qualification requirements.

* * * * *

(c) * * *

(3) * * *

(iv) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. * * *

* * * * *

Par. 9. In § 1.6081–2, paragraph (f) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.6081–2 Automatic extension of time to file partnership return of income.

* * * * *

(f) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

Par. 10. In § 1.6081–3, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

* * * * *

(d) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

Par. 11. In § 1.6081–4, paragraph (c) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.6081–4 Automatic extension of time for filing individual income tax returns.

* * * * *

(c) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

Par. 12. In § 1.6081–6, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.6081–6 Automatic extension of time to file trust income tax return.

* * * * *

(d) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

Par. 13. In § 1.6081–7, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.6081–7 Automatic extension of time to file Real Estate Mortgage Investment Conduit (REMIC) income tax return.

* * * * *

(d) * * * For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 14. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 15. In § 301.6110–4, paragraph (c)(3) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6110–4 Communications from third parties.

* * * * *

(c) * * *

(3) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 16. In § 301.6110–5, paragraph (b)(4) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6110–5 Notice and time requirements; actions to restrain disclosure; actions to obtain additional disclosure.

* * * * *

(b) * * *

(4) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 17. In § 301.6110–6, paragraph (b)(2)(v) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6110–6 Written determinations issued in response to requests submitted before November 1, 1976.

* * * * *

(b) * * *

(2) * * *

(v) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 18. Section 301.6212–2 is added to read as follows:

§ 301.6212–2 Definition of last known address.

(a) *General rule.* Except as provided in paragraph (b)(2) of this section, a taxpayer's last known address is the address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the Internal Revenue Service (IRS) is given clear and concise notification of a different address.

(b) *Address obtained from third party*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, change of address information that a taxpayer provides to a third party, such as a payor or another government agency, is not clear and concise notification of a different address for purposes of determining a last known address under this section.

(2) *Exception for address obtained from the United States Postal Service*—(i) *Annual update.* Annually, the IRS will update taxpayer addresses maintained in IRS records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information for thirty-six months (NCOA database). Except as provided in paragraph (b)(2)(ii) of this section, if the taxpayer's name and last known address in IRS records match the taxpayer's name and old mailing address contained in the NCOA database, within certain tolerances, the new address in the NCOA database is the taxpayer's last known address, unless the IRS is given clear and concise notification of a different address.

(ii) *Update prior to mailing any notice, statement or document from an IRS Service Center.* Prior to mailing any notice, statement, or other document, including a notice of deficiency, to the taxpayer from an IRS Service Center, the IRS will update the taxpayer's last known address by referring to the NCOA database. If the taxpayer's name and last known address in IRS records match the taxpayer's name and old mailing address contained in the NCOA database, within certain tolerances, the new address in the NCOA database is the taxpayer's last known address, unless the IRS is given clear and concise notification of a different address.

(iii) *Duration of address obtained from NCOA database.* The address obtained from the NCOA database under paragraph (b)(2)(i) or (ii) of this section is the taxpayer's last known address until one of the following events occurs—

(A) The taxpayer files and the IRS properly processes a Federal tax return with an address different from the address obtained from the NCOA database; or

(B) The taxpayer provides the IRS with clear and concise notification of a

change of address, as defined in procedures prescribed by the Commissioner, that is different from the address obtained from the NCOA database.

(3) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section:

Example 1. (i) A is an unmarried taxpayer. The address on A's 1999 Form 1040, U.S. Individual Income Tax Return, filed on April 14, 2000, and 2000 Form 1040 filed on April 13, 2001, is 1234 Anyplace Street, Anytown, USA 43210. On May 15, 2001, A informs the USPS of a new permanent address (9876 Newplace Street, Newtown, USA 12345) using the USPS Form 3575, ''Official Mail Forwarding Change of Address Form.'' The change of address is included in the USPS NCOA database.

(ii) In June 2001 the IRS determines a deficiency for A's 1999 tax year and prepares to issue the notice of deficiency. When the IRS mails the notice of deficiency from the Service Center, the IRS refers to the NCOA database and updates the taxpayer's last known address to 9876 Newplace Street, Newtown, USA 12345. On June 15, 2001, the IRS mails a notice of deficiency to A at 9876 Newplace Street, Newtown, USA 12345. For purposes of section 6212(b), the notice of deficiency mailed on June 15, 2001, is mailed to A's last known address.

Example 2. (i) The facts are the same as in *Example 1,* except that instead of determining a deficiency for A's 1999 tax year in June 2001, the IRS determines a deficiency for A's 1999 tax year in December 2001. The IRS performs its annual update of addresses in November 2001. At this time the taxpayer's address maintained in IRS records was changed to 9876 Newplace Street, Newtown, USA 12345.

(ii) On December 14, 2001, the IRS mails a notice of deficiency to A at 9876 Newplace Street, Newtown, USA 12345. For purposes of section 6212(b), the notice of deficiency mailed on December 14, 2001, is mailed to A's last known address.

Example 3. (i) B is an unmarried taxpayer. The address on B's 1999 Form 1040, U.S. Individual Income Tax Return, filed on April 14, 2000, is 1234 Main Street, Mytown, USA 56789. In September 2000, B informs the USPS of a new permanent address (4321 Maple Street, Ourtown, USA 54321) using the USPS Form 3575, ''Official Mail Forwarding Change of Address Form.''

(ii) In September 2000, the IRS determines a deficiency for B's 1998 tax year and prepares to issue the notice of deficiency in the Service Center. On September 15, 2000, the IRS refers to the NCOA database to update the taxpayer's last known address. Because B did not inform the USPS of a change of address in sufficient time to be included in the NCOA database on September 15, 2000, the NCOA database does not yet contain any address information for B. On September 15, 2000, the IRS mails a notice of deficiency to B at 1234 Main Street, Mytown, USA 56789. For purposes of section 6212(b), the notice of deficiency mailed on September 15, 2000, is mailed to B's last known address.

Example 4. (i) C is an unmarried taxpayer. The address on C's 1998 Form 1040, U.S. Individual Income Tax Return, filed on April 15, 1999, and 1999 Form 1040 filed on April 14, 2000, is 2468 Spring Street, Little City, USA 97531. On August 15, 2001, C informs the USPS of a new permanent address (8642 Peachtree Street, Big City, USA 13579) using the USPS Form 3575, ''Official Mail Forwarding Change of Address Form.'' The IRS performs its annual update of addresses in November 2001.

(ii) In September 2001 the IRS district office for Little City, USA determines a deficiency for C's 1998 tax year and prepares to issue the notice. When the IRS mails the notice of deficiency from the district office, the IRS does not refer to the NCOA database because IRS systems are not capable of checking the NCOA database for individual mailings other than for Service Center correspondence. On September 17, 2001, the IRS mails a notice of deficiency for tax year 1998 to C at 2468 Spring Street, Little City, USA 97531. For purposes of section 6212(b), the notice of deficiency mailed on September 17, 2001, is mailed to C's last known address.

(iii) Also in September 2001, the IRS determines a deficiency for C's 1999 tax year. When the IRS mails this notice of deficiency from the IRS Service Center, the IRS refers to the NCOA database and updates the taxpayer's last known address to 8642 Peachtree Street, Big City, USA 13579. On September 18, 2001, the IRS mails a notice of deficiency for tax year 1999 to C at 8642 Peachtree Street, Big City, USA 13579. For purposes of section 6212(b), the notice of deficiency mailed on September 18, 2001, is mailed to C's last known address.

Example 5. The facts are the same as in *Example 4, except* that the IRS Service Center mails the notice of deficiency for C's 1999 tax year on September 10, 2001, after updating the taxpayer's last known address by referring to the NCOA database. On September 17, 2001, when the district office prepares to mail the notice of deficiency for C's 1998 tax year by referring to the IRS's automated master file, the taxpayer's address will appear as 8642 Peachtree Street, Big City, USA 13579. Thus, in both cases, for purposes of section 6212(b), the taxpayer's last known address is 8642 Peachtree Street, Big City, U.S.A. 13579.

(c) *Last known address for all notices, statements, and documents.* The rules in paragraphs (a) and (b) of this section apply for purposes of determining whether all notices, statements, or other documents are mailed to a taxpayer's last known address whenever the term *last known address* is used in the Internal Revenue Code or the regulations thereunder.

(d) *Effective Date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, the rules prescribed by this section apply to all notices, statements, and other documents mailed on or after May 1, 2000.

(2) *Individual moves in the case of joint filers.* In the case of taxpayers who file joint returns under section 6013, if the NCOA database contains change of address information for only one spouse, paragraphs (b)(2) and (3) of this section will not apply to notices, statements, and other documents mailed before January 1, 2001.

Par. 19. In § 301.6303–1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6303–1 Notice and demand for tax.

* * * * *

(a) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 20. In § 301.6305–1, paragraph (b)(2)(ii) is revised to read as follows:

§ 301.6305–1 Assessment and collection of certain liability.

* * * * *

(b) * * *

(2) * * *

(ii) The name, social security number, and last known address of the individual owing the assessed amount. For further guidance regarding the definition of last known address, see § 301.6212–2;

* * * * *

Par. 21. In § 301.6320–1T, paragraph (a)(1) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6320–1T Notice and opportunity for hearing upon filing of notice of Federal tax lien (temporary).

(a) * * * (1) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 22. In § 301.6325–1, paragraph (f)(2)(ii)(*a*) is revised to read as follows:

§ 301.6325–1 Release of lien or discharge of property.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(*a*) Mailing notice of the revocation to the taxpayer at his last known address (see § 301.6212–2 for further guidance regarding the definition of last known address); and

* * * * *

Par. 23. In § 301.6330–1T, paragraph (a)(1) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6330–1T Notice and opportunity for hearing prior to levy (temporary).

(a) * * * (1) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 24. In § 301.6331–2, paragraph (a)(1) is amended by adding a sentence after the second sentence of the paragraph to read as follows:

§ 301.6331–2 Procedures and restrictions on levies.

(a) * * * (1) * * * For further guidance regarding the definition of last known address, see § 301.6212–2. * * *

* * * * *

Par. 25. Section 301.6332–2 is amended as follows:

1. Paragraphs (b)(1) introductory text, (b)(1)(i), and (b)(1)(ii) are redesignated as paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A), and (b)(1)(i)(B), respectively.

2. In newly designated paragraph (b)(1)(i)(B), the text beginning with the second sentence is designated as paragraph (b)(1)(ii).

3. Newly designated paragraph (b)(1)(ii) is amended by adding a sentence after the second sentence of the paragraph. The addition reads as follows:

§ 301.6332–2 Surrender of property subject to levy in the case of life insurance and endowment contracts.

* * * * *

(b) * * * (1) *In general.* (i)* * *

(ii) * * * For further guidance regarding the definition of last known address, see § 301.6212–2. * * *

* * * * *

Par. 26. In § 301.6335–1, paragraph (b)(1) is amended by adding a sentence after the third sentence of the paragraph to read as follows:

§ 301.6335–1 Sale of seized property.

* * * * *

(b) * * * (1) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 27. In § 301.6503(c)–1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 301.6503(c)–1 Suspension of running of period of limitation; location of property outside the United States or removal of property from the United States; taxpayer outside of United States.

(a) * * * For further guidance regarding the definition of last known address, see § 301.6212–2.

* * * * *

Par. 28. In § 301.6903–1, paragraph (c) is amended by adding a sentence after the first sentence of the paragraph to read as follows:

§ 301.6903–1 Notice of fiduciary relationship.

* * * * *

(c) * * * For further guidance regarding the definition of last known address, see § 301.6212–2. * * *

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–30178 Filed 11–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–1998–4447]

Federal Requirements To Carry Ground Tackle on Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of petition for rulemaking and request for comments.

SUMMARY: The Coast Guard seeks comments from interested people, groups and businesses in response to a petition for rulemaking submitted by the National Boating Federation (NBF). The petition requests that the Coast Guard require that all recreational vessels in the United States carry proper anchoring gear and that the gear be in useable condition. Currently, Federal regulations do not require that ground tackle (anchor and line or chain) be carried on recreational vessels as safety equipment. This notice describes the Coast Guard's policy for establishing National minimum safety equipment carriage requirements for recreational vessels, and related issues, to assist interested persons with providing helpful comments as to whether the Coast Guard should initiate a regulatory project.

DATES: Comments and related material must reach the Docket Management Facility on or before May 22, 2000.

ADDRESSES: To make sure your comments and related material (referred to USCG–1998–4447) are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001.

(2) By hand-delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet at the Web Site for the Office of Boating Safety at *http://www.uscgboating.org or at http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Boating Federation (NBF) has submitted a petition to the Coast Guard (included in the public docket for this notice). The petition requests that we require that all recreational vessels in the United States carry proper anchoring gear and that the gear be in useable condition. Currently, Federal regulations do not require that ground tackle (anchor and line or chain) be carried on recreational vessels as safety equipment. The NBF suggests that because we urge boaters experiencing a loss of maneuverability during near-shore boating to set their anchor, we should also require boaters to carry appropriate ground tackle. The NBF did not identify or describe any incidents where the lack of an anchor contributed to, or the presence of an anchor may have prevented, a boating accident resulting in a fatality, injury or property damage.

We maintain a boating accident report database (BARD) on reported boating accidents involving deaths, injuries requiring medical treatment beyond first aid, and property damage greater than $500. We searched the 1997 database on

the root terms ''anchor'', ''drift'' and ''ground'' and found 1,607 incidents out of 8,047 reported accidents, where one or more of the terms were mentioned in the report narrative.

The vast majority (1,593) of reported accident narratives indicated that a factor other than ground tackle was the cause of the accident. The following list describes the number of cases and the general factor categories leading to the 1607 reported accidents.

1. 651—Operator inexperience, failure, or inattention.
2. 412—Machinery failure, no details, or miscellaneous.
3. 125—Alcohol.
4. 115—Poor weather or hazardous water conditions.
5. 111—Excessive speed.
6. 73—Jet-ski or canoe.
7. 65—Vessel at anchor and hit or upset by wake from passing vessel.
8. 20—Drifting on purpose or accident while pulling anchor.
9. 14—Improper lights.
10. 11—Insufficient anchor or improperly anchored.
11. 10—Ran aground while setting anchor or ran aground with anchor down.

Only 14 of the 1,607 report narratives described an incident where the lack of an anchor contributed to, or that the presence of an anchor may have prevented, the reported accident. Listed below are five samples of report narratives from our database that reflect cases where the accident may have been prevented if the operator had carried appropriate ground tackle.

1. ''The operator didn't pay attention to the fuel level and the vessel ran out of gas. Then he tried to anchor but had an improper anchor for sea conditions and the rough water forced the vessel onto the beach totaling it.''
2. ''Due to hazardous weather conditions the operator attempted to anchor the vessel. The anchor line was insufficient and broke and the vessel grounded, causing damage. The vessel then sank.''
3. ''The boat broke free from the dock and drifted across the creek into a marsh. In an effort to recover the boat, both occupants stayed on the boat and tried to get back to the dock. Both occupants were exposed to the weather elements and died from hypothermia.''
4. ''Operator's engine stalled and wouldn't restart. The vessel grounded onto the jetty, causing major damage.''
5. ''The operator was returning from fishing when the engine died and the vessel was sucked into shore.''

Under 46 U.S.C. 4302, we may prescribe regulations to require the installation, carrying or use of associated equipment (including fuel systems, ventilation systems, electrical systems, sound-producing devices, fire fighting equipment, life saving devices, signaling devices, ground tackle, life- and grab-rails, and navigational equipment) on recreational vessels. In prescribing such regulations, we must consider the need for and the extent to which the regulations will contribute to recreational vessel safety and relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation. We have done so for fuel systems (33 CFR part 175, subpart J), ventilation systems (33 CFR parts 175, subpart C and 183, subpart K and 46 CFR part 25, subpart 25.40), electrical systems (33 CFR part 183, subpart I), fire fighting equipment (46 CFR part 25, subpart 25.30), life saving devices (33 CFR part 175, subpart B), and signaling devices (33 CFR part 175, subpart C). The Navigation Rules prescribe requirements to carry sound-producing devices (33 CFR part 86). We have not prescribed requirements to carry ground tackle, life- and grab-rails, or navigational equipment on recreational vessels.

Public Meeting

We do not plan to hold a public meeting in response to this petition. You may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid the consideration of this petition, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Request for Comments

We encourage you to participate in this petition for rulemaking by submitting comments and related material, answering the following questions, as well as other comments in connection with this notice. Please include with your submission your name and address, identify the docket number for this rulemaking (USCG–1998–4447), indicate the specific question of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand-delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Your comments will help us to determine whether to initiate a rulemaking project in accordance with the petitioner's request.

We will summarize all the comments we receive during the comment period, place a copy of the summary in the public docket, and provide copies to the members of the National Boating Safety Advisory Council (NBSAC) for them to consider at their next meeting. We will consider all relevant comments and material received during the comment period in proposing any regulatory or nonregulatory measures that may follow from this notice.

Please consider and respond to the following questions:

1. Should the Coast Guard propose regulations for all recreational vessels operated on waters subject to the jurisdiction of the United States to carry appropriate ground tackle as required safety equipment? Why or why not?

2. If not all vessels, should the Coast Guard propose regulations for any class, type or size of recreational vessels to carry appropriate ground tackle?

3. If not on all waters subject to the jurisdiction of the United States, should the Coast Guard propose regulations for recreational vessels on any such waters?

4. If the Coast Guard should propose any ground tackle carriage requirements, how should we address the variety of anchor sizes and styles, the various lengths of chain or line, and the various sizes and types of recreational vessels that would be subject to such requirements?

5. Please describe any nonregulatory ways to reduce the number of recreational boating accidents that are achievable at lower cost or with less burden than by Federal rules for carrying ground tackle.

6. Are you aware of any additional information about boating accidents involving the use or absence of anchors or ground tackle, which you think we should consider?

Dated: November 15, 1999.

Ernest R. Riutta,

Rear Admiral, Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–30373 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AC72

Economic Analysis of Proposed Concession Contracting Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: With this notice, the National Park Service (''NPS'') addresses the economic impacts of its proposed concession contracting regulation, which NPS published pursuant to Title IV of the National Park Omnibus Management Act of 1998.

DATES: NPS will accept written comments, suggestions or objections until December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 ''C'' Street, NW, Washington, DC 20240 (202/565–1219).

Background

Concession contracts are the form of governmental authorization used to permit private businesses (''concessioners'') to provide visitor services in areas of the national park system. Visitor services include lodging, food service, merchandising, transportation, outfitting and guiding and similar activities.

NPS has been awarding and administering concession contracts in various forms since its establishment in 1916. In 1965, Congress formally established by the Concession Policies Act of 1965 (the ''1965 Act'') a number of policies and procedures regarding concession contracts. 36 CFR part 51 as it presently exists implemented the 1965 law. On November 13, 1998, the Congress substantially reformed these policies and procedures by passage of Title IV of Act of 1998 (the ''1998 Act'').

The 1998 Act requires NPS to promulgate regulations appropriate for its implementation. On June 30, 1999, NPS published proposed regulations for public comment in the **Federal Register**. The deadline for submission of public comments was October 15, 1999. NPS is currently considering the public comments received.

The June 30, 1999, **Federal Register** proposed regulation stated that NPS would publish in the **Federal Register** a related initial regulatory flexibility analysis and invite public comment on it. Because the proposed concession contracting regulations address contracts and public property (park areas), they are not subject to the notice and comment provisions of 5 U.S.C. 553. This conclusion is not affected by the fact that section 417 of the 1998 Act requires NPS to promulgate regulations appropriate for its implementation, as the 1998 Act does not require that this be done through a general notice of proposed rulemaking. Accordingly, the proposed regulations were published for public comment as a matter of policy. NPS has preliminarily determined that because the regulations are exempt from the notice and comment provisions of 5 U.S.C. 553, they appear not to be subject to the Regulatory Flexibility Act. The Regulatory Flexibility Act is only applicable to rules and regulations that are required by 5 U.S.C. 553 or other law to be promulgated after publication of a general notice of proposed rulemaking. As indicated above there is no such notice and comment requirement for the concession contracting regulations. Accordingly, the NPS believes there may be no requirement that an initial regulatory analysis is required.

Nevertheless, NPS has chosen as a matter of policy to prepare an analysis that meets the requirements of the Regulatory Flexibility Act. This analysis has concluded at this juncture that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Public comment is invited on the content of this discussion, as well as the question of whether the proposed concession regulations are in fact subject to the Regulatory Flexibility Act. Upon consideration of the public comments received, NPS will take appropriate final action with respect to any applicable requirements of the Regulatory Flexibility Act by the date of publication of the final concession contracting regulations. The publication of the following analysis is not to be construed as indicating that NPS necessarily considers that it is required by the Regulatory Flexibility Act to prepare an initial regulatory flexibility analysis for the proposed concession contracting regulations.

As a final background note, NPS points out that the preamble to the proposed concession regulations included a statement to the effect that it is likely that the number of concession contracts and permits may decrease to as few as 360 because alternative authorities are now available to NPS. This statement was erroneously included in the preamble after it had been determined by NPS to be incorrect. Accordingly, this statement in the preamble to the proposed regulations should be disregarded and the preamble to the proposed regulations is hereby amended to delete this statement.

General Content of the Proposed Regulations

The proposed concession regulations establish the procedures under which NPS is to administer concession contracts and certain terms and conditions of concession contracts in furtherance of the requirements and policies of the 1998 Act.

The proposed regulations have two major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by the National Park Service under the 1998 Act. With certain exceptions, the 1998 Act requires competitive awards of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a competing proposal for a new concession contract.

Second, unlike the existing 36 CFR part 51, the proposed regulation sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This interest, called a ''leasehold surrender interest,'' is described at length in the 1998 Act. It is the intention of NPS to establish appropriate contract terms and conditions for leasehold surrender interests by the proposed regulations so as to assure that the requirements of the 1998 Act are strictly followed.

Content of Subparts of the Proposed Regulations

Subpart A. Authority and Purpose

Subpart A of the regulation describes the authority for the proposed regulations, their scope, and the scope of concession contracts in general. It also describes the statutory policies that underlie concession contracts.

Subpart B. General Definitions

Subpart B provides a number of definitions of terms that are used throughout the proposed regulations.

Subpart C. Solicitation, Selection and Award Procedures

Subpart C describes general procedures for competitive solicitation, selection and award of concession contracts in compliance with the 1998 Act. Except as described in subpart D, NPS must award all concession contracts on a competitive basis.

Subpart D. Non-Competitive Award of Concession Contracts

Subpart D describes the three limited situations in which NPS may make non-competitive awards of concession contracts as expressly authorized by the 1998 Act. NPS may extend a concession contract for up to three years on a non-competitive basis, may award a temporary contract for a term of no more than three years on a non-competitive basis, and, may award a concession contract on a non-competitive basis in extraordinary circumstances if certain findings are made and special procedures followed.

Subpart E. Right of Preference

Subpart E describes the right of preference to a new concession contract that may be obtained by certain existing satisfactory concessioners. Only satisfactory outfitter and guide concessioners or satisfactory concessioners annually grossing under $500,000 are eligible for the preference. If a concessioner is eligible for the preference, it must submit a responsive offer pursuant to the prospectus issued for the new contract. If the concessioner does so, it is entitled under specified conditions to match the terms of a better proposal for the concession contract.

Subpart F. Leasehold Surrender Interest

Subpart F first defines a number of terms necessary to understand the leasehold surrender provisions of the regulation. Subpart F then sets forth the terms and conditions of leasehold surrender interests which may be obtained under a concession contract. Generally, a leasehold surrender interest constitutes a right of a concessioner to receive payment for capital improvements a concessioner makes on park area lands.

Subpart G. Possessory Interest

Subpart G sets forth transition procedures with respect to the form of compensatory interest (''possessory interest'') obtained by concessioners under certain concession contracts entered into under the 1965 Act and concession contracts to be entered into under the 1998 Act. In general terms, a 1965 Act concessioner may either receive full compensation for existing possessory interest as described in the applicable contract or convert the possessory interest to a leasehold surrender interest if it seeks and is awarded a new concession contract.

Subpart H. Concession Contract Provisions

Subpart H describes in general the terms of certain concession contract provisions that reflect the policies and procedures of the 1998 Act.

Subpart I. Assignment or Encumbrance of Concession Contracts

Subpart I sets forth the standards and procedures applicable to NPS approval of assignments of concession contracts and encumbrance of concessioner assets.

Subpart J. Information and Access to Information

Subpart J describes the types of records a concessioner must retain for the purposes of NPS concession contract administration, the access rights of the government to the records, and the types of concessioner information that are made available to the public.

Subpart K

Subpart K describes the effect of the 1998 Act's repeal of the 1965 Act by the 1998 Act.

Subpart L

Subpart L sets forth information collection requirements of the proposed regulations.

Impacts of the Proposed Regulations on Small Businesses

NPS considers that the fundamental policy objective of the 1998 Act was to make the award of larger NPS concession contracts more competitive by generally repealing the preference in renewal granted to all concessioners by the terms of the 1965 Act.

The preference in renewal granted all concessioners under the 1965 Act resulted in more than 99% of concession contract renewals being awarded to the incumbent concessioner. This was because the preference in renewal gave the incumbent concessioner the right to match the terms and conditions of any better offer made for the contract by a competitor. Because of the renewal preference, no competing offers at all were received for concession contract renewals in the vast majority of cases under the 1965 Act. Potential competitors generally considered it pointless to go to the effort of submitting a competing offer that was subject to being matched by the incumbent concessioner. The 1965 Act's preference in renewal created an enormous entry barrier to persons that wished to become NPS concessioners.

The 1998 Act requires full competition, with no advantage to an incumbent, for the award of most concession contracts with annual gross receipts in excess of $500,000. The exception is outfitting and guide concession contracts. Approximately 175 of the existing 630 NPS concession contracts will be subject to open competition upon renewal. (This analysis assumes that the repeal applies to existing concession contract renewals as well as to the renewal of concession contracts entered into after the effective date of the 1998 Act. NPS is presently considering this issue in promulgating the proposed concession contracting regulations. However, the premises of the analysis remain the same no matter when the repeal takes effect.)

The greatest effects of the 1998 Act are likely to occur because of the 175 concessioners that will no longer receive a renewal preference. Currently, 142 of the operations of these concessioners generate gross receipts under $5 million annually. The effects of ending renewal preferences will be experienced by incumbent firms who will face competition in the solicitation process for a new contract, particularly those that do not win the new contract. Incumbent firms will experience the effects of having to prepare competitive proposals. In order to win, they may have to take efficiency measures or trim profits. Those incumbent firms that do not win will experience the effects of losing business volume. Non-incumbent firms that choose to submit a proposal but do not win will experience the costs of bid preparation without any increase in their business volume. Non-incumbent firms that win contracts will experience an increase in their business volume. It should be emphasized that these are the normal effects of competition in the U.S. economy.

The NPS has no basis at this time for predicting the number of non-incumbent firms that will submit proposals or win no-preference concession contracts, nor does the NPS have a basis for predicting the extent of the changes that incumbents will make in order to win new contracts. It is possible however to illustrate reasonable bounds on the resulting effects. If each of the 142 concession contracts held by incumbents generating gross receipts of less than $5 million were to face 2 new proposals, the total number of firms (of all sizes) that would be affected would be 426. If, despite the competitive process, the incumbents were all to obtain the new contracts, then only the 142 incumbents would experience any effects other than the cost of preparing proposals. If all 142 were to be replaced by new firms, then 284 firms would experience effects of changes in business volume, half-losing, half-gaining. On this basis and in light of the great number of firms in the food service, lodging, merchandising, marina and guide industries in the United

States, it does not appear that a substantial number of small entities will experience significant effects.

NPS considers that the preference in renewal reform contained in the 1998 Act will have a beneficial economic impact on small businesses as it eliminates for most larger concession contracts the entry barrier resulting from the preference in renewal.

NPS does not consider that any other provisions of the 1998 Act, or the proposed regulations, will have a significant impact on small businesses. In fact, for the most part, the proposed regulations do not ''regulate'' businesses at all in the usual meaning of that term. The proposed regulations in general merely describe the procedures under which concession contracts are to be awarded, describe the nature and extent of leasehold surrender interest that may be obtained by a concessioner under the terms of a concession contract, and describe various provisions that NPS must include in concession contracts.

No business of any size is under any obligation to comply with the proposed regulations unless it chooses to apply for a concession contract.

Analysis

The following analysis covers the matters that would be addressed in an initial regulatory flexibility analysis if the Regulatory Flexibility Act applies. They are as follows, together with the NPS discussion:

(1) A description of the reasons why the action is being considered;

The NPS is promulgating the proposed concession regulations in compliance with section 417 of the 1998 Act.

(2) A succinct statement of the objectives of, and legal basis for, the proposed regulation;

The objective of the proposed concession regulations is to provide regulatory implementation for applicable concession contracting provisions of the 1998 Act. The legal authority for the proposed concession regulations is section 417 of the 1998 Act.

(3) A description of, and, where feasible, an estimate of the number of small entities to which the proposed regulation will apply;

The proposed concession regulations, when finalized, will apply to all persons holding NPS concession contracts, and, in part, to persons who seek to become an NPS concessioner by submitting a contract proposal. As of September 1999, there are approximately 630 NPS concessioners operating in 127 park areas (out of the 378 park areas NPS administers). Of this number, there are approximately 113 food service concessioners (providing food services ranging from prepackaged food items to full service restaurants), 71 lodging concessioners (providing lodging ranging from rustic cabins to hotels), 180 merchandising concessioners (providing merchandise ranging from campstores to souvenir shops) and 41 marina concessioners. Most other concessioners are outfitters and guides, including hunting, fishing, hiking, and mountain climbing guides, guided trail rides, river runners, boat/canoe rental, snowmobile rental and bicycle rental operators. NPS generally characterizes concessioners by the primary service provided. However, most larger concessioners provide a combination of services (for example, lodging, food service, merchandising and service stations).

The application procedures of the proposed regulations apply to any person who chooses to submit a proposal for a concession contract. The number of such persons is unlimited.

In 1997 (the latest year for which complete data is available), all but 33 of the 630 concessioners had gross receipts of less than $5 million. NPS considers a concessioner with gross receipts of $5 million or less to be a small business for purposes of this analysis. Businesses that apply for concession contracts may be of any size.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed regulation, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record;

The proposed concession regulations contain three classes of reporting, recordkeeping and other compliance requirements. They are applicable only to persons holding concession contracts. These are (1) the recordkeeping requirements (§ 51.111 of the proposed regulations) mandated by section 411 of the 1998 Act; (2) the information submission requirements (§ 51.100 of the proposed regulations) necessary for NPS to approve a sale or transfer of a concession contract pursuant to section 408 of the 1998 Act; and (3) the submission and recordkeeping requirements regarding leasehold surrender interests under concession contracts (subpart F of the proposed regulations) necessary for implementation of section 405 of the 1998 Act.

All new concession contracts will contain provisions concerning the first the first two classes of requirements. Only persons that obtain new concession contracts that provide for construction of improvements on park land will be required to comply with the third class of requirements. It is estimated that less than 150 concession contracts will provide for construction of improvements.

The type of professional skills which will be required for compliance are accounting, and in limited circumstances, legal.

(5) An identification, to the extent practicable, of all relevant federal regulations that may duplicate, overlap, or conflict with the proposed regulation.

There are no federal regulations which duplicate, overlap, or conflict with the proposed concession contracting regulations.

(6) A description of any significant alternatives the proposed regulation, that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed regulation on small entities.

The proposed regulations implement express, detailed provisions of the 1998 Act. Given the specificity of the 1998 Act, NPS has little flexibility as to significant alternatives to the provisions of the proposed regulations which would accomplish the objectives of the 1998 Act and which would minimize any impact of the proposed regulations on small businesses. NPS anticipates that public comment on the proposed regulations may result in adoption in the final regulation of alternative procedures in some circumstances. However, in developing the proposed concession regulations, NPS considered and adopted several alternatives for implementing provisions of the 1998 Act consistent with the spirit of the Regulatory Flexibility Act, as follows:

(1) Section 51.13 of the proposed concession regulations authorizes NPS to include in concession contract prospectuses additional solicitation or selection procedures in the interests of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phase prospectus—a qualifications phase and a proposal phase—and, use of a lottery system to select proposals where two or more proposals are determined to be of equal merit. This authority to utilize additional solicitation or selection procedures gives NPS administrative discretion to tailor the solicitation and award of concession contracts in a flexible manner to meet the circumstances of a particular concession opportunity. The result will be a more competitive process in special circumstances.

(2) Section 51.13 also authorizes NPS to include simplified solicitation or information requirements in concession prospectuses when it is considered that the concession contract is likely to be awarded to a sole proprietorship. This non-regulatory administrative flexibility will allow NPS to reduce the paperwork or procedural steps generally required by the regulations for many smaller concession contract opportunities.

(3) Section 406 of the 1998 Act requires that the rates charged visitors by concessioners be reasonable and appropriate and makes the rates subject to approval by NPS. NPS, in developing the proposed concession regulations, chose not to implement these requirements by regulation. Rather, the NPS rate approval process will continue to be established administratively, giving NPS more flexibility in its implementation. In this connection, NPS in recent years has been seeking to reduce paperwork and procedural steps in its rate approval process. It will continue to do so with an intention to rely on market forces to control rates whenever possible.

(7) A discussion of certain possible significant alternatives consistent with the stated objectives of applicable statutes. The specific significant alternatives considered are set forth below together with NPS' analysis:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

As stated above, all but approximately 33 of the some 630 businesses to which the proposed concession regulations will apply are small businesses within the meaning of the Regulatory Flexibility Act. Accordingly, NPS has made the regulations' requirements equally applicable to both small and large businesses.

In this connection, the recordkeeping requirements set forth in § 51.111 of the proposed regulations, although required to carry out the mandate of section 411 of the 1998 Act, do not prescribe any particular records that a concessioner must maintain as a regulatory compliance matter. Rather, the regulation gives NPS the authority to prescribe recordkeeping requirements administratively. This will occur in the form of requirements of particular concession contracts.

It is NPS policy to have less burdensome recordkeeping requirements for smaller concessioners. NPS policy under consideration requires an audited financial report to be submitted to NPS only by concessioners with annual gross receipts of more than 1 million. Concessioners with annual gross receipts between $250,000 and $1 million need only include a financial review with their annual report financial report and concessioners with gross receipts of less than $250,000 are not required to submit any form of independent verification of their annual financial reports.

The information that a concessioner is to submit to NPS under § 51.100 of the proposed regulations (regarding sale or transfer of a concession contract) is not necessarily mandatory. Section 51.101 of the proposed regulations permits NPS to waive these information requirements in circumstances where particular information is considered unnecessary.

The information and recordkeeping requirements of subpart F of the proposed regulations are applicable only to those concessioners that that have leasehold surrender interests. However, although mandatory, in fact the proposed regulations only mandate what a prudent concessioner would have to do in order to make sure that it receives credit for all the leasehold surrender interest to which the concessioner is entitled. This is because, under section 405 of the 1998 Act, a concessioner generally obtains leasehold surrender interest in buildings it constructs on park area lands in the amount of their initial construction cost inflated by CPI. In order to keep track of this amount, a concessioner would have to maintain the records that subpart F requires as a matter of prudent business practice. Subpart F also requires a concessioner to submit to NPS for approval plans and specifications of buildings it propose to build on park lands. This requirement is necessary in order for NPS to carry out its responsibilities under section 402 of the 1998 Act. Section 402 requires that the development of concession facilities in a park area be limited to those that are necessary and appropriate for public use and enjoyment of the park area and that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area.

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the regulation for small entities;

NPS considers that the compliance and reporting requirement of the proposed regulations are quite clear. However, NPS anticipates that the clarity of the proposed regulations will be improved in the final regulations as a result of the consideration of public comments. NPS considers that the location of the compliance and reporting requirements of the proposed regulations (in three different subparts) is appropriate as the requirements reflect the specific substantive provisions of the subpart. To consolidate them in one location would make them less clear as they would not be in context. NPS considers that the proposed regulations are as simple as possible in light of the many statutory requirements applicable to concession contracts under the terms of the 1998 Act. However, NPS anticipates that public comment may contain good suggestions for further simplification that will be reflected in the final regulations.

(3) The use of performance rather than design standards;

The proposed regulations do not dictate standards for reporting or information requirements.

(4) An exemption from coverage of the regulation, or any part thereof, for small entities.

As discussed above, almost all NPS concessioners are small businesses within the meaning of the Regulatory Flexibility Act. The proposed regulations, accordingly, do not exempt small businesses from their application.

Initial Conclusion

NPS, based on the above considerations, does not consider that the proposed concession contracting regulations, even if they are subject to the Regulatory Flexibility Act, will have a significant impact on a substantial number of small businesses, within the meaning of the Regulatory Flexibility Act. These initial determinations will be reviewed by NPS in the course of considering public comments on this analysis. As indicated above, NPS will then take appropriate final action with respect to any applicable requirements of the Regulatory Flexibility Act by the date of publication of the final concession contracting regulations. No final administrative decision on the applicability of the Regulatory Flexibility Act to the proposed concession contracting regulations or their impact will be made until after consideration of public comments received in response to this notice.

Linda Canzanelli,

Acting Associate Director, Park Operations and Education.

[FR Doc. 99–30292 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6478–7]

RIN 2060–AG91

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: On June 29, 1999 (64 FR 34854), we issued the National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology (Generic MACT) rulemaking package. This proposal amends the promulgated rule (40 CFR part 63, subpart YY) regarding the regulation of surge control vessels and bottoms receiver vessels. This proposal also clarifies that surge control vessels and bottoms receiver vessels containing wastewater are covered by the wastewater provisions.

DATES: Comments. Comments must be received on or before January 21, 2000.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 13, 1999, a public hearing will be held on December 22, 1999.

ADDRESSES: Comments. Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–97–17, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of comments also be sent to Mr. David W. Markwordt (see **FOR FURTHER INFORMATION CONTACT**).

Public hearing. If a public hearing is held, it will be held at 10:00 a.m. in the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–97–17 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning this document, contact Mr. David W. Markwordt; Policy, Planning, and Standards Group; Emission Standards Division (MD–13); U.S. Environmental Protection Agency; Research Triangle Park, North Carolina 27711; telephone: (919) 541–0837; facsimile: (919) 541–0942; e-mail address: markwordt.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

The docket is an organized and complete file of all the information we considered in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (Act).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Dorothy Apple; Policy, Planning, and Standards Group; Emission Standards Division (MD–13); U.S. Environmental Protection Agency; Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4487 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Dorothy Apple to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–97–17. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham NC 27711. We will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive information, the information may be made available to the public without further notice to the commenter.

Technology Transfer Network

In addition to being available in the docket, an electronic copy of today's proposed amendments is also available through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this preamble is written using plain language. Thus, the use of ''we'' in this notice refers to the EPA. The use of ''you'' refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

Regulated Entities

Entities potentially regulated are those that produce acetal resins (AR), acrylic and modacrylic fiber (AMF), hydrogen fluoride (HF), and polycarbonate (PC) and are major sources of hazardous air pollutants (HAP) as defined in section 112 of the Act. Regulated categories and entities include:

Category	Regulated entities[a]
Industry	Producers of homopolymers and/or copolymers of alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of, and recoverers of HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum). Producers of polycarbonate.

[a] This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1104(a)(1), (b)(1), (c)(1), and (d)(1) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What is the Background for the Proposed Amendments?

On June 29, 1999 (64 FR 34854), we published the National Emission Standards for Hazardous Air Pollutants: Generic MACT final rulemaking package. At that time, standards were promulgated for four major HAP source categories (i.e., AR production, AMF fiber production, HF production, and PC production). This proposal amends the promulgated rulemaking package (40 CFR part 63, subpart YY) regarding the regulation of surge control vessels and bottoms receiver vessels that do not contain wastewater, and clarifies that surge control vessels and bottoms receiver vessels that contain wastewater are covered by the wastewater provisions of these standards. These proposed amendments would parallel the intended subparts F, G, and H of part 63 (collectively known as the hazardous organic national emission standards for hazardous air pollutants (HON)) level of control.

We are also making corrections to the promulgated rulemaking package (40 CFR part 63, subparts SS, TT, UU, WW, and YY) under a separate notice.

II. What is the Basis for the Proposed Amendments?

During the public comment period for the proposed wastewater provisions (64 FR 34950) applicable to wastewater streams for the AR, AMF, and PC production source categories, we received a comment that stated that one part of the proposed provisions for liquid streams in open systems under the generic MACT rule is inconsistent with the wastewater requirements of the HON, and that the Generic MACT wastewater provisions, as many other aspects of the Generic MACT rulemaking package, are intended to parallel what is required under the HON.

The commenter explained that, under the HON, a ''tank'' could qualify as either a storage vessel or a surge control vessel if it met the relevant size and vapor pressure criteria and that, as proposed, § 63.1106(c) of the Generic MACT wastewater provisions also applies to ''tanks,'' and that a vessel could be subject to both requirements (i.e., storage vessel/surge control vessel requirements and liquid streams in open systems requirements). The commenter stated that the overlap results in inconsistencies in emission control requirements and suggested that we add clarifying changes to eliminate double-regulating of a storage vessel that qualifies as a vessel subject to the liquid streams in open systems requirements.

Under the Generic MACT rule, a vessel that qualifies as a vessel subject to the liquid streams in open systems requirements would contain material that qualifies as wastewater as defined under § 63.1101 (as proposed to be amended). Additionally, the definition for ''storage vessel'' or ''tank'' under the Generic MACT promulgated rule excludes ''vessels that store wastewater.'' Therefore, as proposed under the wastewater provisions, ''vessels that store wastewater'' would not be subject to ''storage vessel'' or ''tank'' requirements. Our assessment of the comment indicated that there was a need to modify the definition of the promulgated definition for ''storage vessel'' to clarify that applicable storage vessels or tanks that contain wastewater are covered under the wastewater provisions. Therefore, today's proposal adds this clarification to the definition of ''storage vessel'' and is consistent with the HON.

Upon further evaluation of the comment, we discovered that we omitted requirements for ''surge control vessels'' and ''bottoms receivers.'' Under the HON, surge control vessels and bottoms receivers are covered under equipment leak requirements, though their control applicability criteria and requirements parallel what is required for storage vessels. The Control Level 2 equipment leak subpart (40 CFR part 63, subpart UU), which is cross-referenced under the Generic MACT rule, parallels the level of control under the HON, except that it does not specify requirements for bottoms receivers and surge control vessels. The Control Level 2 equipment leak subpart referenced under the Generic MACT rule mirrors what was developed under the Synthetic Organic Chemicals Manufacturing Industry (SOCMI) Consolidated Air Rule (CAR) development effort. Under the SOCMI CAR effort, bottoms receivers and surge control vessels are regulated under the storage vessel provisions.

Inadvertently, under the promulgated Generic MACT rule, we defined ''storage vessel'' as excluding ''bottoms receivers'' and ''surge control vessels'' (which parallels the HON). This led to an omission of specified requirements for bottoms receivers and surge control vessels, and a need for clarification on how they were to be regulated. Therefore, we are proposing to amend the definition for ''storage vessel'' as including bottoms receivers and surge control vessels. As intended, this proposed amendment would result in control of these vessels that parallels what is done under the SOCMI CAR, which mirrors the requirements of the HON, and would reduce confusion on how they are to be regulated.

III. What Are the Impacts Associated With the Proposed Amendments?

The changes contained in the proposed amendments consist of corrections and a clarification change that reflect what was intended and accounted for in our control costs and emission reduction estimates at the time of promulgation of 40 CFR part 63, subparts SS, TT, UU, WW, and YY. Therefore, these proposed amendments will not affect the estimated emissions reduction or the control costs for the standards promulgated for AR, AMF, HF, and PC production source categories on June 29, 1999 (64 FR 34854). These clarifying corrections should make it easier for owners and operators of affected sources, and for local and State authorities, to understand and implement the requirements of the Generic MACT rule.

IV. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* We submitted an Information Collection Request (ICR) document (ICR No. 1871.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740. We may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB approved the information collection requirements for the AR, AMF, HF, and PC production source categories and assigned the OMB control number 2060–0420 to the ICR. This approval expires September 30, 2002.

The proposed amendments would have no impact on the information collection estimates made previously for the promulgated rule. Therefore, the ICR has not been revised.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that these proposed amendments do not qualify as a ''significant regulatory action'' and, therefore, are not subject to review by OMB.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule 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, as specified in Executive Order 13132. This proposed rule has minimal direct affects on the 10 plants which are impacted by this rule. This proposed rule has even less impacts on States within which the plants reside. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), we are required to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These proposed amendments would not have a significant impact on a substantial number of small entities because they clarify and correct the promulgated 40 CFR part 63, subparts SS, TT, UU, WW and YY, and do not impose any additional regulatory requirements on owners or operators of affected sources regulated by standards promulgated on June 29, 1999 (64 FR 34854).

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995, Pub. L. 104–4, we must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Under section 203, we are required to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of UMRA, we must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. We are required to select the least burdensome alternative for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless we explain why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because these proposed amendments do not include a 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 1 year, we have

not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by these proposed amendments, we are not required to develop a plan with regard to small governments. Therefore, the requirements of UMRA do not apply to these proposed amendments.

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), we are directed to use voluntary consensus standards instead of government-unique standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. By doing so, the Act is intended to reduce the cost to the private and public sectors.

Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, *etc.*) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), International Organization for Standardization (IOS), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). Under the NTTAA, we are required to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

As part of a larger effort, we are undertaking a project to cross-reference existing voluntary consensus standards in testing, sampling, and analysis, with current and future EPA test methods. When completed, we will use this project to assist in identifying potentially applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

These proposed amendments do not require the use of any new technical standards, therefore section 12(d) does not apply.

G. Executive Order 13045

Executive Order 13045, entitled Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that we determine (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered.

These proposed amendments are not subject to Executive Order 13045 because they do not constitute an economically significant regulatory action as defined by Executive Order 12866 and because they do not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13084

Under Executive Order 13084, we 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 cost incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires that we provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our 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, we are required 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 proposed amendments do not impose any duties or compliance costs on Indian tribal governments. Further, the proposed amendments provided herein do not significantly alter the control standards imposed by 40 CFR part 63, subparts SS, TT, UU, WW, and YY, including any that may effect communities of Indian tribal governments. Hence, today's proposed amendments do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed amendments.

List of Subjects for 40 CFR Part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Air emissions control, Equipment, Hazardous air pollutants, Hydrogen fluoride production, Polycarbonate production, Reporting and recordkeeping requirements, Storage vessel.

Dated: November 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

2. Section 63.1101 is amended by revising the definitions for *equipment* and *storage vessel* as follows:

§ 63.1101 Definitions.

* * * * *

Equipment means each of the following that is subject to control under this subpart: pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve, connector, instrumentation system in organic hazardous air pollutant service as defined in § 63.1103 for the applicable process unit, whose primary product is a product produced by a source category subject to this subpart.

* * * * *

Storage vessel or *Tank*, for the purposes of regulation under the storage vessel provisions of this subpart, means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) that provides structural support and is designed to hold an accumulation of liquids or other materials. Storage vessel includes surge control vessels and bottoms receiver vessels. For the purposes of regulation under the storage vessel provisions of this subpart, storage vessel does not include vessels

permanently attached to motor vehicles such as trucks, railcars, barges, or ships; or wastewater storage vessels. Wastewater storage vessels are covered under the wastewater provisions of § 63.1106.

* * * * *

[FR Doc. 99–30231 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2463; MM Docket No. 99–15; RM–9440]

Radio Broadcasting Services; Neihart, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 246C2 at Neihart, Montana. *See* 64 FR 5736, February 5, 1999. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–15, adopted October 27, 1999, and released November 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–30172 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–9266–01; I.D. 072699A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; Correction

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

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: This document contains corrections to the advance notice of proposed rulemaking that was published on October 22, 1999. These corrections are necessary to inform the public of the correct distance the U.S. Navy proposes to use to safeguard marine mammals from receiving more than a non-serious injury due to sounds from the Navy's Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) Sonar.

ADDRESSES: A copy of the U.S. Navy application may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION: On October 22, 1999, NMFS published a notice (64 FR 57026) that NMFS had received a request from the U.S. Navy for a small take of certain marine mammal species incidental to Navy operations of SURTASS LFA Sonar over the next 5 years.

Need for Correction

As published, the notice contains errors to the proposed safety zone that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication on October 22, 1999, of the advance notice of proposed rulemaking (I.D. 072699A), which was the subject of FR Doc. 99–27579, is corrected as follows:

On page 57028, in the first column, under the heading Risk Analysis, in paragraph two, the sentence beginning on line 13, is corrected to read: ''However, the RL for serious injury would be much higher, and the marine mammal would have to be much closer to the array than the 1 km (0.54 nm) radius around the vertical array delineating the 180 dB sound field.''

On page 57028, in the second column, in the second complete paragraph, in line 7 the words inside the parentheses are corrected to read: ''(inside the 180 dB re 1 μPa_{rms} sound field; approximately 1 km (0.54 nm) from the source)''

Dated: November 16, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–30422 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 224
Monday, November 22, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 5:00 p.m on Friday, December 10, 1999, at the University of Delaware, Black Studies Department, 420 Ewing Hall, Conference Room 416, Newark, Delaware 19716. The Committee will (1) update developments under its Reference Guide project, (2) identify prospective nominees for appointments, and (3) delimit ideas for its next project, including a series of forums across Delaware.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–30300 Filed 11–19–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission which was to convene at 6:00 p.m. and adjourn at 8:30 p.m. on Thursday, November 18, 1999, at the Radisson Hotel, 4728 Constitution, Baton Rouge, Louisiana, has a new meeting date. The meeting date is Thursday, December 16, 1999. This is a change of date only.

The original notice for the meeting was announced in the **Federal Register** on Friday, October 29, 1999, FR Doc. 99–28385, 64 FR, No. 209, p. 58379.

Persons desiring additional information should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414).

Dated at Washington, DC, November 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–30298 Filed 11–19–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 5:00 p.m on Friday, December 10, 1999, at the Philadelphia Convention Center, Administrative Level Board Room, 12th and Arch Streets, Philadelphia, Pennsylvania 19107. The Committee will review the staff draft report, Barriers to Minority and Women Owned Business in Pennsylvania, develop preliminary conclusions, recommendations, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–30299 Filed 11–19–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 9:00 p.m on Monday, December 6, 1999, at the Holiday Inn (Rushmore Plaza), 505 North 5th Street, Rapid City, South Dakota 57701. The purpose of the meeting is to obtain information from Federal, tribal, State, and local officials and citizens to present views and information on administration of justice issues in South Dakota affecting Native Americans.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–30301 Filed 11–19–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Census 2000 Web Site and Questionnaire Customer Satisfaction Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 21, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Courtney Stapleton, Bureau of the Census, PRED, Mailstop 9200, Washington, DC 20233–0001, (301)457–4142.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to administer customer satisfaction surveys to a sample of people who (1) Fill out their census form on the Internet or (2) Go to the Internet Census 2000 help screens. The surveys will be self administered, self-selected and will be completed and submitted via the Internet. The surveys evaluate various aspects of Internet Data Collection (IDC) and Internet Questionnaire Assistance (IQA). Specific help topics and overall satisfaction will also be evaluated.

This evaluation is unique, given it is the first time the Census Bureau has attempted an Internet data collection within the decennial census. This evaluation will serve as an indicator of the success of the project as measured by customer satisfaction. It will provide substantial feedback for future Census Internet products.

Of those who submit their census form via the Internet, a sample will be selected by digits located in the 22 digit Census ID. Once in the sample, those people will be asked if they would like to fill out the customer satisfaction survey while they are online. The respondent then must choose to participate by clicking on the link to the survey. Of those who visit the Internet Census 2000 help screens, a sample will be asked if they would like to fill out the customer satisfaction survey during pre-selected times. The respondent then must choose to participate by clicking on the link to the survey while online. We anticipate 1,500 responses from each survey.

Additionally, there are 7,500 households that are a part of the Response Mode and Incentive Experiment (RMIE). These households will be specifically asked to fill out their census forms via the Internet. These households will receive a letter giving them the Internet address of the Census Internet Form. Some of these respondents will be offered an incentive of a 30 minute pre-paid phone card if they do in fact complete their census form via the Internet. We expect that the use of the incentive and advance letter will increase response rates to the customer satisfaction survey. We anticipate 4,500 responses.

II. Method of Collection

The customer satisfaction surveys will be online self-administered surveys. Respondents who are selected to be a part of the sample will have to self select by clicking on a hypertext link to complete the survey. Once completed, the respondent will submit the survey online.

III. Data

OMB Number: Forthcoming.

Form Number: This electronic questionnaire will have no form number.

Type of Review: Regular submission.

Affected Public: Those who receive Census short forms or update/leave (US and Puerto Rico) and have access to the Internet.

Estimated Number of Respondents: 1,500 (IQA)+ 1,500 (IDC)+ 4,500 (RMIE) = 7,500.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.

Respondent's Obligation: Voluntary (self-selected).

Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 16. 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–30349 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–99]

Foreign-Trade Zone 174—Tucson, AZ; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the City of Tucson, Arizona, grantee of Foreign-Trade Zone 174, requesting authority to expand its zone (Site 2) in Tucson, Arizona, within the Tucson Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 8, 1999.

FTZ 174 was approved on January 30, 1991 (Board Order 508, 56 FR 4595, 2/5/91). The City of Tucson, Arizona, was designated the new grantee on November 22, 1996. The general-purpose zone project currently consists of five sites (398 acres): *Site 1* (107 acres)—Southpointe Park, intersection of Kolb and Valencia Roads; *Site 2* (193 acres)—Century Park Research Center, along Kolb Road between Valencia Road and I–10; *Site 3* (70 acres)—within the Santa Cruz industrial park; *Site 4* (25 acres)—within the Downtown Commerce Park, adjacent to I–19 and I–10; and, *Site 5* (3 acres)—warehouse facility, 330 South Toole Avenue.

The applicant is now requesting authority to expand existing Site 2, by

adding a 70-acre parcel within the Century Park Research Center, along Kolb Road between Valencia Road and I–10, Tucson. This proposed expansion is located within the State designated Enterprise Zone and will increase Site 2 from 193 acres to 263 acres. The area previously had FTZ status prior to a relocation of certain space in 1996. The site is owned by the Levin Family Limited Partnership. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 7, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 166 West Alameda, Tucson, AZ 85701.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 9, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–30385 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1061]

Approval for Expanded Manufacturing Authority (Pharmaceutical Products) Within Foreign-Trade Subzone 15D Bayer Corporation Kansas City, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, has requested authority on behalf of Bayer Corporation (Bayer), operator of FTZ Subzone 15D, located in Kansas City, Missouri, to expand the scope of manufacturing activity conducted under FTZ procedures and to expand the Subzone 15D boundaries at the Bayer plant (FTZ Doc. 52–98, filed 11–16–98; amended 1–25–99 and 3–4–99, to remove nitromethane and bulk aspirin from the scope of authority); and,

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 64677, 11/23/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, D.C., this 4th day of November 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–30386 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1063]

Expansion of Foreign-Trade Zone 138 Columbus, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Rickenbacker Port Authority, grantee of Foreign-Trade Zone No. 138, submitted an application to the Board for authority to expand FTZ 138 to update the boundaries of the existing zone site at Rickenbacker International Airport (Franklin County) and to include a new site in Lima (Allen County), Ohio, adjacent to the Columbus Customs port of entry (FTZ Docket 55–98, filed 12/4/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 69261, 12/16/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 138 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of November 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–30387 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–99]

Foreign-Trade Zone 116—Port Arthur, TX; Expansion of Manufacturing Authority—Subzone 116B, Fina Oil and Chemical Company, Jefferson County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting authority on behalf of the Fina Oil and Chemical Company (Fina), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 116B at the Fina oil refinery complex in Jefferson County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 8, 1999.

Subzone 116B was approved by the Board in 1995 and consists of four sites with 450 employees in Jefferson County, Texas: *Site 1* (1,244 acres)—main refinery complex located along the Neches River at State Farm to Market Highway 366 & 32nd Street, Port Arthur Jefferson County); *Site 2* (19 acres)—West Port Arthur Tank Farm (564,000 barrel capacity), owned by American Petrofina Pipe Line Company (subsidiary of Fina, Inc.), located at Roosevelt and 53rd Streets, Port Arthur; *Site 3* (194 acres)—refinery expansion site, located adjacent to the refinery at State Farm to Market Hwy 366, Port

Arthur; *Site 4*—Sun Marine Terminal-Nederland tank storage facility, leased storage (1,278,500 barrel capacity), along the Neches River in Nederland, Texas. Authority was granted for the manufacture of fuel products and certain petrochemical feedstocks and refinery by-products (Board Order 772, 60 FR 49564, 9/26/95).

The refinery (180,000 barrels per day; 450 employees) is used to produce fuels and petrochemical feedstocks. The expansion request involves a new petrochemical unit. Fina, in a limited partnership with BASF Corporation will construct a single-train naphtha cracker facility on 51 acres of Site 1. The new facilities (with 150 additional employees) will produce ethylene (1.9 billion lbs./year), propylene (1.2 billion lbs./year), as well as butadiene, styrene, benzene, toluene and xylene (HTS 2901, duty free). In addition, the expansion will increase storage capacity by 1.5 million barrels, and increase the overall crude and condensate capacity of the refinery to 240,000 BPD. New feedstocks for use in the expanded facilities will include natural gas condensate, and virgin gas oil (HTS 2710.00.45, 2710.00.05, and 2710.00.10, duty rate ranges from 5.25 cents/barrel to 10.5 cents/barrel). Approximately 75 percent of the crude oil and 85 percent of the condensates will be sourced from abroad.

Zone procedures would exempt the new refinery facility from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil and natural gas condensate in non-privileged foreign status. The application indicates that the additional savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period February 7, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 500 Dallas, Suite 1160, Houston, TX 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230

Dated: November 9, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–30384 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1065]

Grant of Authority for Subzone Status; Mercury Marine (Inc.) (Marine Propulsion Products), Fond Du Lac and Oshkosh, WI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''the establishment * * * of * * * foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in our adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone 41, has made application for authority to establish special-purpose subzone status at the marine propulsion products manufacturing facilities of Mercury Marine (Inc.), located in Fond du Lac and Oshkosh, Wisconsin (FTZ Docket 47–98, filed 10–30–98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 60293, 11–9–98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the marine propulsion products manufacturing facilities of Mercury Marine (Inc.), located in Fond du Lac and Oshkosh, Wisconsin (Subzone 41H), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 9th day of November, 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–30383 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1996 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–022. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Fish Tank System, replacement parts for existing tank system, and fish breeding accessories. *Manufacturer:* Klaus-Jurgen Schwartz, Germany. *Intended Use:* See notice at 64 FR 53999, October 5, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is indented to be used, is being manufactured in the United States. *Reason:* The foreign instrument provides: (1) An optimal design based on small tank size, simple operation and uniformity for genetic analysis of early development using large numbers of zebra fish and (2) compatibility with an existing tank system. These capabilities are pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value to the foreign

instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–30381 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–025. *Applicant:* University of North Carolina, School of Pharmacy, CB #7360, Beard Hall, S. Colombia Street, Chapel Hill, NC 27599. *Instrument:* Nose Only Inhalation System. *Manufacturer:* ADG Developments Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used to evaluate novel therapies for the treatment of tuberculosis in animal models by delivering aerosols of drug by nose only exposure to Mycobacterium infected guinea pigs. *Application accepted by Commissioner of Customs:* October 28, 1999.

Docket Number: 99–026. *Applicant:* Boston University, Department of Biology, 44 Cummington Street, Boston, MA 02215. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used in the study of the ultrastructure of biological specimens, especially neurons in the brain during experiments conducted to determine whether the structure of neurons is altered under a variety of experimental conditions, such as different levels of activity or molecular signaling. In addition, the instrument will be used to investigate the development and maturation of brain neurons and their synapses to determine how structure and ultrastructure change with growth and maturation of the organism. *Application accepted by Commissioner of Customs:* October 28, 1999.

Docket Number: 99–027. *Applicant:* University of Hawaii, School of Ocean, Earth Science and Technology, Department of Oceanography, 1000 Pope Road, MSB 610, Honolulu, HI 96822. *Instrument:* Low-Level Beta Counter, Model GM–25–5. *Manufacturer:* Riso National Laboratory, Denmark. *Intended Use:* The instrument is intended to be used for the measurement of naturally occurring radionuclides in seawater. Various marine regimes will be sampled at a variety of oceanic depths in order to estimate the spatial and temporal distribution of radioactive elements. The instrument will be used during the graduate level course Ocean 633, Chemical Oceanography Lab Methods to teach oceanographic laboratory and field analytical techniques. Application accepted by Commissioner of Customs: November 4, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–30382 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Business Development Mission to Brazil, Uruguay, Argentina and Chile

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of business development mission to Brazil, Uruguay, Argentina and Chile.

SUMMARY: This notice serves to inform the public of a Secretarial Business Development Mission to Brazil, Uruguay, Argentina and Chile, February 13–21, 2000, and of the opportunity to apply for participation in the mission; sets forth objectives, procedures and participation criteria for the mission; and requests applications.

DATES: Applications should be submitted to Lucie Naphin by December 27, 1999, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. Recruitment and selection of private sector participants will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

ADDRESSES: Request for and submission of applications—Applications are available from Lucie Naphin, Director, Office of Business Liaison, at (202) 482–1360 or via facsimile at (202) 482–4054. Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to Ms. Naphin. Applications sent by facsimile must be immediately followed by submission of the original application to Ms. Naphin at the following address: Office of Business Liaison, Room 5062, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lucie Naphin, Director of the Office of Business Liaison, or Jennifer Andberg at (202) 482–1360. Information is also available via the International Trade Administration's (ITA) website at: http://www.ita.doc.gov/doctm.

SUPPLEMENTARY INFORMATION:

Description of the Mission

Secretary of Commerce William M. Daley will travel to Brazil, Uruguay, Argentina and Chile as head of a senior-level business development mission focused on three key growth sectors—information and communications technology, environment and energy. Brazil, Uruguay and Argentina, together with Paraguay, form Mercosur, the acronym in Spanish for the Southern Common Market, the world's fourth largest economic area, a customs union with a population in excess of 200 million people and a combined GDP of approximately $1 trillion. Chile, along with Bolivia, is an associate member of Mercosur.

The mission will visit Brasilia, Sao Paulo, Montevideo, Buenos Aires and Santiago. The overall focus of the trip will be commercial opportunities for U.S. companies, including joint ventures, presented by the continuing market liberalization and privatizations within Mercosur. In each country, briefings and matchmaking business appointments will be arranged for members of the business delegation in order that they may take full advantage of the commercial opportunities available to firms in these key South American markets. Individual country briefings will include local public and private sector officials to discuss developments in the country that affect the commercial environment.

Commercial Setting for the Mission

Participants in the mission will be drawn from, but not limited to, the following sectors:

• *Information and Communications Technology:* Brazil is Latin America's most important telecommunications market for U.S. companies. U.S. companies' telecommunications exports to Argentina totaled $461.4 million in 1997—nearly doubling the 1996 total of $238 million. Chile is the most advanced telecommunications market in Latin America. A 20–25 percent annual growth rate is predicted within Chile for the next five years, with investments projected at $700 million annually.

• *Environment:* Brazil is the largest environmental technologies market in South America, totaling an estimated $3.65 billion for 1997, with growth projections for equipment sales ranging from 8–10 percent per year over the next five years. Argentina is the second largest environmental technologies market in South America, totaling an estimated $885 million for 1998. Over the last five years, investment in the environmental sector has doubled. The Chilean environmental market totaled approximately $460 million in 1997 and is expected to grow by between 8 and 10 percent through 2000.

• *Energy:* Brazil is expected to make annual investments of $8 billion over the next five years to meet its rapidly increasing energy demand. Argentine electricity planners expect consumption to continue to grow 5 percent annually for the next decade with investment opportunities in natural gas combined cycle power generation plants, transmission and distribution networks. Chile's electricity demand—over 29,000 GWh in 1998—is averaging 7 percent annual growth. Natural gas, coal-fired and hydro power plants totaling 3,500 MW of generating capacity are currently under construction or planned and offer potential investment and trade opportunities.

Mercosur

Mercosur encompasses 50 percent of Latin America's Gross Domestic Product, 43 percent of its population, 59 percent of its total landmass, 50 percent of its industrial production and intra-regional trade and 33 percent of total Latin American foreign trade. Its nations' per capita income is 30 percent higher than that of Latin America as a whole.

Reforms implemented by the individual countries have produced impressive growth rates. The strong GDP growth recorded by the region in the 1990s has been underpinned by a surge in foreign trade and direct investment. Since 1990, U.S. export sales to the rest of Latin America and the Caribbean have increased 150 percent, and by almost 250 percent to the countries of Mercosur, reaching $22.4 billion in 1998.

U.S. investments within the Mercosur region have increased dramatically during the 1990s, reaching a total of $40 billion by 1998. U.S. companies have invested in a broad range of sectors from transportation infrastructure and national utilities, to mining and industry, to services and agriculture. In Brazil, U.S. investment now exceeds $38 billion, to the point where the United States is Brazil's largest investor, accounting for one-third of total foreign investment. In fact, Brazil is home to more U.S. direct investment than Mexico.

However, even before the global financial crisis hit Brazil and led to its January 1999 devaluation, a general slowdown in Brazil and the other Mercosur economics was causing U.S. exports to slump. U.S. exports to Mercosur declined by 3.4 percent, falling by almost $800 million in 1998, compared to 1997. Even so, our trade is still substantial. U.S. exports to Mercosur last year exceeded $22.4 billion, ranking the region as our 6th largest export market.

The slowdown is clearly visible in U.S. trade performance. Excluding Mexico, 1998 marked the first time since 1986 that our total trade with Latin America declined, with our exports to the region flat and imports falling. For the year, U.S. exports to Brazil declined 5 percent; to Chile by 9 percent; and virtually all other countries within the region showed a reversal from recent double-digit export growth. Our balance-of-trade has decreased dramatically during the first 9 months of 1999 when compared with the same period last year.

Fortunately, recent reports indicate that the Latin downturn may be short lived, with growth returning to many of the countries in the year 2000.

Already Brazil has evidenced signs of a more rapid than expected recovery following its January devaluation. The government of Brazil is forecasting an overall trade surplus in 1999. Interest rates remain high, but they are far lower than the levels seen last fall and winter. Brazil has been lowering rates steadily since March. Most observers predict that positive growth will resume by the end of the year. Several important sectors, such as transportation, telecommunications and agriculture, have continued to grow even during the recession.

Positive Brazilian growth should have a salutary effect, both on overall regional economic prospects and for a rebound in U.S. exports and investment. Brazil, after all, is the largest economy in Latin America, the 9th largest in the world and our largest South American trading partner. Its gross national product is nearly equal to that of the rest of South America combined. It is also a key market for Latin nations, particularly within the southern cone. Indeed, Argentina, the second largest economy in South America, sends roughly 30 percent of its exports to Brazil and has been severely affected by the Brazilian recession.

The continuing recovery in Asia should provide an impetus for growth in other Latin countries. Chile is but one example. Mired in a recession for much of the past year caused by declining world prices for its primary export commodity—copper—and the contraction of Asian markets which account for almost 30 percent of Chilean exports, Chile has nonetheless appeared to weather the worst of its economic storm. Business confidence is returning and the longer term outlook for Chile's economy is positive. Export commodity prices are recovering, and after a year of very low or zero growth in 1999, the government of Chile expects a rebound to 5.5 percent growth in 2000.

Goals for the Mission

The mission will further both U.S. commercial policy objectives and advance specific business interests. It is aimed at:

• Introducing American companies to Mercosur and promoting expanded commercial opportunities in Mercosur;

• Advocating on behalf of U.S. firms already active in Mercosur;

• Resolving market access issues for U.S. companies in Mercosur, particularly in light of Mercosur's integration efforts, both internally and with other markets; and

• Advancing U.S. economic/commercial policy objectives in the FTAA negotiations, particularly as it will allow the Secretary to engage Argentine officials in a timely discussion of their FTAA goals, as they will have the Chairmanship of the FTAA process. The Secretary and participating U.S. companies will be among the first high-level U.S. officials to interact with the newly elected governments in Argentina, Uruguay and Chile.

Scenario for the Mission

Briefings and matchmaking business appointments will be made for members of the business delegation in Brazil,

Uruguay, Argentina and Chile. In Mercosur, the business of the mission will consist of:

- Embassy briefings on the economic/commercial climates;
- Meetings with Ministers and other senior level government officials with responsibilities for the mission's focus sectors;
- Meetings with potential buyers, agents/distributors and partners.
- Meetings with the U.S. business community.

The Commerce Department's U.S. and Foreign Commercial Service will provide logistical support for these activities at each stop.

The trip itinerary will be as follows:

February 13 (Sun): Brasilia
February 14 (Mon): Brasilia—Depart Brasilia for Sao Paulo; Arrive Sao Paulo
February 15 (Tue): Sao Paulo
February 16 (Wed): Depart Sao Paulo for Montevideo; Arrive Montevideo
February 17 (Thu): Depart Montevideo for Buenos Aires; Arrive Buenos Aires
February 18 (Fri): Buenos Aires
February 19 (Sat): Buenos Aires
February 20 (Sun): Depart Buenos Aires for Santiago—Arrive Santiago
February 21 (Mon): Santiago—Depart Santiago for Washington, D.C.
February 22 (Tues): Arrive Washington, D.C.

Criteria for Participation of Companies

The recruitment and selection of private sector participants in the mission will be conducted according to the Statement of Policy governing Department of Commerce-led trade missions announced by Secretary Daley on March 3, 1997. Companies will be selected according to the criteria set out below. Approximately 12–15 companies will be selected.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote on the mission (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service. (At the discretion of the Department, which will generally be exercised on a sector-by-sector basis, the 51 percent U.S. content requirement may be modified or waived.)

Selection Criteria

Company participation will be determined on the basis of:

- Level of seniority of designated company representatives and its appropriateness to the mission objectives;
- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business line to the plan for the mission;
- Past, present and prospective business activity in Latin America, and particularly Brazil, Uruguay, Argentina and Chile, as applicable; and
- Diversity of company size, type, location, demographics and traditional under-representation in business.

In addition, the Department may consider whether the companies' overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the missions' foreign and commercial policy objectives.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

Time Frame for Applications

Applications for the trade mission to Brazil, Uruguay, Argentina and Chile will be made available beginning on or about Monday, November 22. The fees to participate in the mission have not yet been determined. The fees will not cover travel or lodging expenses. For additional information on the trade missions or to obtain an application, business persons should be referred to Lucie Naphin, Director of the Office of Business Liaison, or Jennifer Andberg at 202–482–1360. Applications should be submitted to Lucie Naphin by December 27, 1999, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

Authority: 15 U.S.C. 1512.

Dated: November 17, 1999.

Walter M. Bastian,

Director, Office of Latin America and the Caribbean, International Trade Administration, Department of Commerce.

[FR Doc. 99–30380 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of the final revised Management Plan for the Narragansett Bay National Estuarine Research Reserve, 1998–2003.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Narragansett Bay National Estuarine Research Reserve (NBNERR). The NBNERR was designated in 1980 and has been operating under a Management Plan approved in 1983. Pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461, and Section 921.33(c) of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary.

The revisions to the NBNERR Management Plan include:

Information about the Reserve's boundary expansion that increased from 2626 acres to 4259 acres. The land area is 2478 acres including the privately owned Prudence Conservancy, all state owned properties on Prudence Island, all of Hope and most of Patience islands. The aquatic areas of the Reserve are delineated by all waters out to a depth of 18 feet and is 1781 acres in extent.

Addition of dedicated positions for the NBNERR Manager and Research Coordinator.

Under a NOAA matching grant, the NBNERR renovated an existing building to create a new 2,500 square-foot multi-purpose facility to support research, education, and office space. The newly renovated building provides educational exhibit space, a research lab, meeting rooms, the NBNERR office. Other construction improvements include the repair and upgrading of the caretaker's and visitors' cottages.

The revised management plan demonstrates continued strong support from the Rhode Island Department of Environmental Management (DEM) and NOAA for research, monitoring and education programs. A long-term research plan focuses on understanding the structure and function of key habitats, such as the Reserve's five major marsh systems. A comparative ecology approach provides the basis for research project design and priority setting. Collaborative studies with Federal, state, and institutional researchers are encouraged. An associated long-term monitoring

program will characterize the environmental quality and the occurrence and abundance of living resources. Monitoring is designed to determine baseline status and trends in habitat quality and the health of important resource species.

Copies of the document can be obtained from the Narragansett Bay National Estuarine Research Reserve, Department of Environmental Management, 55 South Reserve Drive, Prudence, Rhode Island 02872. (401) 683–6780.

FOR FURTHER INFORMATION CONTACT: Doris Grimm, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910. (301) 713–3132, Extension 107.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: November 16, 1999.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 99–30322 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111799A]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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 and its Comprehensive Management Committee, Habitat Committee, Dogfish Committee, Information and Education Committee, Executive Committee, and its Demersal Species Committee, together with the Atlantic States Marine Fisheries Commission, will hold a public meeting.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times of committee meetings.

ADDRESSES: This meeting will be held at the Dunes Manor Hotel, 2800 Baltimore Avenue, Ocean City, MD; telephone 1–800–523–2888.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for this meeting are: Use of observers in small mesh fisheries; review status of small mesh gear research efforts; review with advisors NMFS's Proposed Final Rule for essential fish habitat (EFH); develop committee recommendations regarding the National Marine Fisheries Service's (NMFS) Proposed Final Rule for EFH; develop committee recommendations for dogfish regarding 2000 and 2001 management measures, i.e, quotas, trip limits, size limits; review New England Council's action regarding NMFS's disapproval of Dogfish Fishery Management Plan's B_{msy} target; review Council policy regarding quarterly newsletter, brochures, white papers and regulatory information sheets; participate in NMFS review of its actions regarding implementing regulations for the Monkfish Fishery Management Plan; address Council policy regarding use and role of industry advisors; review FY1999 budget; approve FY2000 grant application package; review and discuss Monitoring Committee recommendations for summer flounder, scup and black sea bass; develop and approve management measures for 2000 recreational specifications for summer flounder, scup and black sea bass.

Dates and Times of Committee Meetings

On Tuesday, December 7, the Comprehensive Management Committee will meet from 10:00 a.m. until noon. The Habitat Committee will meet from 10:00 a.m. until noon. The Dogfish Committee will meet from 1:00–3:00 p.m. The Information and Education Committee will meet from 1:00–3:00 p.m. The Council will meet from 3:00–5:00 p.m. to decide on dogfish management measures for 2000–2001. On Wednesday, December 8, the Executive Committee will meet from 8:00–9:00 a.m. The Demersal Species Committee will meet as a Council Committee of the Whole, together with the Atlantic States Marine Fisheries Commission's Management Board, from 9:00 a.m. until 5:00 p.m. On Thursday, December 9, Council will meet from 8:00 a.m. until 1:00 p.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

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 least 5 days prior to the meeting date.

Dated: November 17, 1999.

Richard W. Surdi,

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

[FR Doc. 99–30423 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111599A]

North Pacific Fishery Management Council; Notice of MeetingsAGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The Council and its advisory bodies will meet in Anchorage, Alaska the week of December 6, 1999. The Scientific Committee will begin at 8:00 a.m. on Monday, December 6, and continue through Wednesday, December 8. The Advisory Panel will begin at 8:00 a.m. on Monday, December 6, and continue through December 9. The Council will begin at 8:00 a.m. on Wednesday, December 8, and continue through Monday, December 13. All meetings are open to the public except Executive Sessions which may be held during the week to discuss litigation and/or personnel matters.

ADDRESSES: All meetings will be held at the Hilton Hotel, 500 W. Third Avenue, Anchorage, Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Council

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports

Executive Director's Report
State Fisheries Report by Alaska Department of Fish and Game
National Marine Fisheries Service Management Report
Enforcement and Surveillance Reports

American Fisheries Act

Review co-op performance reports and agreements.
Comment on proposed rule for 2000, particularly with regard to vessel exemptions.
Update analysis of excessive shares/processing sideboards.

Essential Fish Habitat

Comment on interim final rule.

Halibut Charter Guideline Harvest Level

Initial review of alternatives and analysis.

Steller sea lions

Status report on litigation.
Comment on proposed rule for 2000.
Discuss adaptive management strategies and results of evening workshop.

Pacific Cod License Limitation Program Endorsements

Discussion paper on grandfather provisions and progress on analysis.

Groundfish Supplemental Environmental Impact Statement (SEIS)

Status report and comment on notice of intent.

Halibut Subsistence

Review alternatives and analysis and give direction to staff.

Alaska Board of Fisheries

Receive summary of October work session and review Board of Fisheries proposals of mutual concern.

Groundfish Specifications for 2000

Approve final Bering Sea/Aleutian Islands (BSAI) Groundfish Stock Assessment and Fishery Evaluation (SAFE) report.
Approve final 2000 BSAI groundfish and prohibited species apportionments.
Approve final Gulf of Alaska (GOA) Groundfish Stock Assessment and Fishery Evaluation (SAFE) report.
Approve final 2000 GOA groundfish and prohibited species apportionments.
Approve assumed halibut discard mortality rates.

Advisory Meetings

Advisory Panel

With the exception of the reports listed above, the agenda for the Advisory Panel will mirror that of the Council listed above.

Scientific and Statistical Committee

The Scientific and Statistical Committee (SSC) will address the following items:

Groundfish SAFEs and specifications for 2000 for BSAI and GOA groundfish.

Initial review of alternatives and the analysis for the halibut charter harvest guideline level.

Progress on the Groundfish SEIS.

Comment on the interim final rule for essential fish habitat.

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly-scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 17, 1999.

Richard W. Surdi,

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

[FR Doc. 99–30421 Filed 11–19–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Appointment of Chaplains for the Military Services; DD Forms 2088 and 2741; OMB Number 0704–0190.

Type of Request: Revision.

Number of Respondents: 797.

Responses Per Respondent: 1.

Annual Responses: 797.

Average Burden Per Response: 46 minutes (average).

Annual Burden Hours: 614.

Needs And Uses: The Department is required to ensure that religious organizations seeking to endorse chaplains are eligible and that applicants qualified for the military chaplain services are endorsed by those religious organizations. This information collection will provide basis information about the religious organization seeking to supply chaplains and ensure that those organizations are authorized by their membership to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains. Two forms are associated with this program to collect the necessary information. The DD From 2741, ''Ecclesiastical Endorsing Organization Verification/Reverification Information,'' requests basic demographic information about the religious denominations seeking to supply chaplains. It request the name of an official authorized to represent the organization to the Military Services, and it requires the organization to certify that it is authorized by its membership to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains. The DD Form 2088, ''Certificate of Ecclesiastical Endorsement,'' is used by religious denominations to certify that a member of their clergy is professionally qualified to become a chaplain. It request information about name, address, professional experience, and previous military experience to be used in determining grade, date of rank, and eligibility for promotion for appointees to the chaplain services.

Affected Public: Not-for-Profit Institutions.

Frequency: On occasion; Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Office for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 16, 1999.

Patricia L. Toppings,

Altenate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99– 30296 Filed 11–19–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–11 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 16, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 NOV 1999
In reply refer to:
I-99/012727

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $85 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Egypt

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 60 million
Other	$ 25 million
TOTAL	$ 85 million

(iii) **Description of Articles or Services Offered**: Modification/upgrade of five AN/TPS-59(V)2 radar systems to the AN/TPS-59(V)3 configuration consisting of the procurement and installation of five AN/TPS-59(V)3E Theater Missile Defense Modified Shelters, five Array Modification Kits, and Command and Control Operation Shelter Interfaces with associated provisioning, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.

(iv) **Military Department**: Navy (LCT)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(vii) **Date Report Delivered to Congress**: 5 NOV 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Modification/upgrade of AN/TPS-59(V)2 Radar Systems to the AN/TPS-59(V)3 Configuration

The Government of Egypt has requested a possible sale for the modification/upgrade of five AN/TPS-59(V)2 radar systems to the AN/TPS-59(V)3 configuration. The modification/upgrade consists of the procurement and installation of five AN/TPS-59(V)3E Theater Missile Defense Modified Shelters, five Array Modification Kits, and Command and Control Operation Shelter Interfaces with associated provisioning, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $85 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of radar will provide more responsive and timely information for air defense operations. The modification/upgrade of the AN/TPS-59 radar would significantly contribute to the modernization of its forces as well as its interoperability with U.S. forces. It would greatly simplify the projection of U.S. military forces during regional contingency operations by enhancing the deployment of 3D dimensional land based radar capabilities. This sale will not provide a new capability in the region since AN/TPS-59 or comparable radar systems are presently in the inventory of most of the countries in the region.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation of Syracuse, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives in Egypt. However, there will be two U.S. contractor representatives for five years representing varying technical skills and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AN/TPS-59(V)3E radar system and all associated hardware and software is Unclassified. The AN/TPS-59 Electronic Counter-Counter Measures (ECCM) is critical technology, the ECCM is Unclassified. Threat and security concerns relative to the AN/TPS-59(V)3 are founded upon the system's operational employment and the location of anticipated deployment areas. There is insignificant anticipated consequence due to loss of this hardware technology to an advanced or competent adversary.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–30297 Filed 11–19–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–04: Biotechnological Investigations—Ocean Margins Program (BI–OMP)

AGENCY: Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving research applications involving the use of molecular biological and biogeochemical techniques to understand the linkages between carbon and nitrogen cycles (primary production and microbial processes) in ocean margins. This information is critical to understanding carbon fixation and sequestration in ocean margin ecosystems and global biogeochemical cycles. Applications must involve mutually collaborative partnerships between institutions with a strong tradition of research in marine sciences and those institutions with developing research capabilities in marine science. Partnerships are particularly encouraged with institutions that traditionally have served groups under represented in the sciences. The goals of such collaborative research projects are to enhance the research capabilities of both institutions, to promote significant interactions between institutions, to foster long-term collaboration among investigators, and to advance understanding at the molecular and biogeochemical level of the linkages between nitrogen cycling and carbon fixation and sequestration in coastal oceans.

DATES: To permit timely consideration for awards in Fiscal Year 2000 and early Fiscal Year 2001, formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., February 10, 2000.

ADDRESSES: Formal applications referencing Program Notice 00–04 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–04. This address also must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, e-mail: anna.palmisano@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–04 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The primary research goal of the Biotechnological Investigation—Ocean Margins Program is to establish a more thorough understanding of the molecular to global scale links and feedback mechanisms between solar irradiance, marine microbial activity, primary productivity, carbon and nitrogen cycles and remotely-sensed ocean color data. Specifically, DOE seeks applications to:

I. Apply new and innovative techniques in marine molecular biology and marine biotechnology to assess fixation of carbon dioxide from the atmosphere, determine the mechanisms and processes that control the dynamics of nitrogen fixation or denitrification in coastal waters and sediments, define the coupling and/or decoupling of carbon and nitrogen cycles in coastal environments, and determine the linkages between the function and structure of microbial communities mediating carbon and nitrogen cycling in coastal environments, and

II. Examine the environmental factors (including nutrient availability, temperature, irradiance, and biopolymer lability) that affect the linkages between primary productivity, the utilization of particulate and dissolved organic matter (POM and DOM) by bacterial populations, and nitrogen cycling in coastal areas.

This information is crucial to understanding the responses of marine biological systems to changes in atmospheric radiative budgets and global biogeochemical cycles.

Program Relationships

The Biotechnological Investigations—Ocean Margins Program is expected to build on past research results and accomplishments within the Ocean Margins Program (OMP) component of the Biological and Environmental Research (BER) program. The main objective of OMP was determining whether primary productivity on continental shelves is quantitatively significant in removing carbon dioxide (CO_2) from the atmosphere. Other objectives of the OMP were: (1) Quantifying the ecological and biogeochemical processes that affect the cycling, flux, and storage of carbon and other biogenic elements at the land/ocean interface; and (2) Defining ocean margin sources and sinks in global biogeochemical cycles.

Under the first phase of BI–OMP, molecular biological techniques were developed, adapted, and applied to determine how biological processes are regulated and controlled by genetic limitations and environmental variables. Research emphasis was placed on molecular regulation of photosynthetic carbon reduction by phytoplankton; molecular diagnostic markers of bacterial growth, production, and nutrient limitations to growth, and; molecular techniques for elucidating metabolic pathways.

Research in Biotechnological Investigations—Oceans Margins Program will complement ongoing OBER efforts in the area of ocean carbon sequestration. The Carbon Management Science Program is funding a DOE Center for Ocean Carbon Sequestration Research jointly lead by the Lawrence Berkeley National Laboratory and Lawrence Livermore National Laboratory.

The Center is performing research necessary to evaluate the feasibility, effectiveness and environmental acceptability of sequestration of carbon in the ocean, either through direct injection of carbon dioxide to ocean depths or by fertilization of the ocean with limiting nutrients such as iron. The Carbon Management Science Program also is supporting the sequencing of microorganisms involved in ocean carbon cycling including *Prochlorococcus marinus.*

Biotechnological Investigations—Ocean Margins Program (BI–OMP)

BI–OMP is an outgrowth of the Ocean Margins Program (OMP). It places an increased emphasis on the application of modern molecular tools to marine microbes and their role in carbon and nitrogen cycling, and processes affecting global change. Photosynthetic rates in the ocean, and sequestration of atmospheric CO_2 by marine primary production greatly depend on the availability of fixed inorganic nitrogen. Three major external sources of fixed inorganic nitrogen are cultural eutrophication of the coastal zone; atmospheric deposition of anthropogenic and naturally produced oxides of nitrogen; and nitrogen fixation from the atmosphere by microorganisms.

Research in Temperate and High Latitude coastal areas indicates that the availability and cycling of nitrogen is likely to be the major control on primary productivity and carbon cycling in these

areas. Moreover, it appears that denitrification (the reduction of fixed nitrogen to N_2) overwhelms nitrogen fixation by cyanobacteria in Northern Latitude waters and sediments. In these areas, there does not appear to be paucity of iron (Fe) to limit nitrogen fixation, but nitrogenase activity may be inhibited by the elevated concentrations of ammonia (NH_3) that occur in Arctic waters following phytoplankton blooms. Since little is known about the rates of nitrogen fixation, primary productivity, and bacterial respiration in cold water areas, this notice calls for applications to help understand the molecular to global scale links and feedback mechanisms between solar irradiance, marine microbiology, coastal nitrogen and carbon cycles, primary productivity, and remotely-sensed ocean color data in the low-temperature waters, such as those off Alaska and the Pacific Northwest.

Although it is anticipated that most of the research performed will be laboratory-based, if field studies are necessary, they should be conducted in the coastal waters, including those off the North Slope of Alaska and Pacific Northwest; or, in the estuarine and shelf waters of the Mississippi River and Gulf of Mexico; Savannah River and South Atlantic Bight; or Chesapeake Bay and Mid-Atlantic Bight. Applications that are solely concerned with the taxonomic characterization or distributions of bacteria, or the identification of new biochemicals or enzymes from marine organisms, are excluded from consideration within this notice.

Application of Molecular Tools to Microbes Mediating Carbon and Nitrogen Cycling

This notice encourages applications that use molecular approaches to study marine microbial processes, in particular, carbon and nitrogen cycling. Insights can be gained from application of biotechnological tools to carbon sequestration and storage, nitrogen fixation and denitrification. Knowledge of the genes responsible for these processes, and most importantly, the expression of these genes in marine environments is needed. The mechanisms by which environmental factors regulate gene expression in ocean margin environments will help us to understand the natural controls on these processes.

The advent of modern molecular biology has provided powerful tools for examining genes and gene expression. Molecular methods are now being applied to research problems in marine biology, including the enzymes involved in carbon fixation (*e.g.*, ribulose bisphosphate carboxylase), nitrogen fixation (*e.g.*, nitrogenase) and denitrification (*e.g.*, nitrate reductase). Examples of enabling biotechnologies include in situ polymerase chain reaction (PCR) to amplify specific catabolic genes within bacterial cells, and fluorescent in situ hybridization (FISH) to elucidate genotypes in microbial communities. A fundamental knowledge of molecular regulatory mechanisms of photosynthesis and nitrogen cycling in the oceans is needed.

Environmental Factors That Affect Linkages Between Carbon and Nitrogen Cycling

Environmental factors such as nutrient availability, temperature, irradiance, and biopolymer lability affect the coupling and decoupling of primary production, bacterial respiration, POM and DOM formation, and nitrogen metabolism in coastal areas. The impact of individual environmental factors and synergistic effects of multiple environmental factors, on these processes is poorly understood. This notice encourages applications that address the environmental controls on carbon and nitrogen cycles, and their coupling and decoupling. An understanding of these linkages is critical to monitoring and predicting potential changes due to physical, chemical or biological factors, and may ultimately contribute to the development of algorithms for use in interpreting remotely sensed ocean color data.

Collaborative Partnerships

Research applications shall include a mutually collaborative partnership between institutions that have a strong tradition of research in the marine sciences and those institutions with developing research capabilities in marine science. Participation of institutions with a high proportion of groups that are under represented in the sciences are particularly encouraged. Examples of collaborative activities include co-investigator status, periodic exchanges of researcher-in-residence between institutions, and joint supervision of research students. It is critical that both institutions have key roles in the collaboration. One institution should serve as the primary applicant with a subcontract to the collaborative institution. The application should:

- Clearly state the nature of the collaborative research agreement between the institutions;
- Define respective research roles and responsibilities of scientists at each institution;
- Describe how the partnership between the institutions will be effected (*e.g.*, team meetings, shared students, *etc.*); and
- Provide separate institutional budgets.

In addition, the applicants will need to show how their proposed collaborative research addresses the goals stated in this notice and convey a commitment to developing research partnerships between respective institutions. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at http://www.sc.doe.gov/production/grants/Colab.html.

It is anticipated that a total of up to $2 million will be available for multiple grants awarded in FY2000 and FY2001, contingent upon availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets are expected to range from approximately $50,000 depending on the number of partnerships involved the nature of the research proposed. Applications should include detailed budgets for each year of support requested.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility,

limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. In addition, for this notice, the Project Description must be 20 pages or less, exclusive of attachments, and the application must contain a Table of Contents, an abstract or project summary, letters of intent from collaborators (if any) and short curriculum vitae consistent with National Institutes of Health guidelines. On the SC grant face page, form DOE F4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address. Lengthy application appendices are not encouraged.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on November 8, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–30359 Filed 11–19–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–03; Fundamental Plant and Microbial Research in Carbon Management

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES), of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the area of fundamental research underlying potential strategies to reduce or limit gaseous carbon production from fossil fuel use. Research-related activities in areas of interest to the Division of Energy Biosciences include biochemical, molecular genetic, and cellular mechanisms of carbon fixation metabolism in plants and microbes.

DATES: Applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 00–03, should be received by DOE by January 12, 2000. A response regarding the potential program relevance of the preapplication and encouraging or discouraging a formal application will be communicated to the applicant by January 31, 2000.

The deadline for receipt of formal applications is March 1, 2000, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: All preapplications, referencing Program Notice 00–03, should be sent to Dr. Gregory L. Dilworth, Division of Energy Biosciences, SC–17, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 00–03, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–03. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact: Dr. Gregory L. Dilworth, Division of Energy Biosciences, SC–17, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873, fax (301) 903–1003, e-mail: greg.dilworth@science.doe.gov

The full text of Program Notice 00–03 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: Conversion of sunlight to fuels and chemicals by plants and microorganisms and the interconversion of greenhouse gases requires a better understanding of plant and microbial biochemistry, physiology, molecular biology, and the structure and function of enzymes and sub-cellular components. Areas of specific interest include fundamental understanding in photosynthesis, photochemistry, photosynthetic and nonphotosynthetic carbon fixation, plant and microbial carbon biochemistry, regulatory control of plant assimilate allocation and transport, molecular regulatory mechanisms controlling carbon metabolism, and related areas of bioscience.

Program Funding

It is anticipated that up to $4.8 million will be available for multiple grant awards to be made in FY 2000. Multiple year funding of grant awards is expected, and is also contingent on the availability of appropriated funds, progress of the research, and continuing program need. Applications received by the Office of Science under its normal competitive application mechanisms may also be deemed appropriate for consideration under this announcement and may be funded under this program.

Applicants may collaborate with researchers in other institutions, such as industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement with a similar potential total amount of funds will be issued for DOE Federally Funded Research and Development Centers. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and this agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. The research description must be 10 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested and the proposed experimental design). Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on November 12, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–30361 Filed 11–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Department of Energy Fiscal Year 2000 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs Request for Grant Applications

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of program solicitation for the request for grant applications for Fiscal Year 2000 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

SUMMARY: Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219) and reauthorized until the year 2000 by the Small Business Research and Development Enhancement Act of 1992 (Pub. L. 102–564); and the STTR program which was created by Title II of the Small Business Research and Development Enhancement Act of 1992 (Pub. L. 102–564), and reauthorized until the year 2001 by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135), the Department of Energy (DOE) expects to award grants in the technical topics listed in the **SUPPLEMENTARY INFORMATION** section.

DATES: The solicitation for the DOE SBIR and STTR programs will be a single document this Fiscal Year (FY 2000) and will be available on the World Wide Web at *http://sbir.er.doe.gov/sbir* and *http://sttr.er.doe.gov/sttr* on or about November 29, 1999.

Applications in response to the solicitation must be received by 5:00 p.m., EST on Tuesday, February 29, 2000.

ADDRESSES: The solicitation requires all applications be submitted to the following address: SBIR/STTR Program Manager (SC–32), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Phase I grant applications hand carried by the applicant may be delivered to the above mentioned address only. Applications will not be accepted by the Department at its Independence Avenue SW, Washington, D.C. address.

FOR FURTHER INFORMATION CONTACT: Julie Scott, Program Support Specialist, telephone (301) 903–0569. Those without Web access should either write to the SBIR/STTR Program Manager, SC–32, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–1414, or e-mail *sbir-sttr@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The objectives of the SBIR and STTR programs include increasing private sector commercialization of technology developed through DOE-supported R&D, stimulating technological innovation in the private sector, and improving the return on investment from federally-funded research for economic and social benefits to the nation. DOE will support high-quality research or research and development (R&D) on advanced concepts concerning important mission-related scientific or engineering problems and opportunities that could lead to significant public benefit if the research is successful.

For both SBIR and STTR, grant applications are sought for the following technical topics:

1. Improved Composite Materials and Processing Technologies;
2. High Performance Networks and Applications;
3. High-Speed Wireless Data-Link for Communicating from Downhole to the Surface while Drilling;
4. High-Temperature Electronics Development for Geothermal Applications;
5. Neutron Instrumentation;
6. Lithium-Based Battery Technology for Electric and Hybrid Vehicles;
7. Recovery, Recycle, and Re-Use of Polymers and Plastics;
8. Membranes for Advanced Industrial Separation Technologies;
9. Reactive Separations;
10. Development of Nonaqueous Enzymes for Chemical Production;
11. Integrative Analysis of Gene Expression in Plants and Non-Medical Microbes;
12. Genome, Structural Biology, and Related Biotechnologies;
13. Medical Sciences;
14. Biological Carbon Sequestration Research and Technology;
15. Carbon Cycle Measurements of the Atmosphere and the Biosphere;
16. Atmospheric Measurement Technology;
17. Advanced Monitoring Technologies for Soils, Sediments and Groundwater;
18. Technologies for Long-Term Monitoring of Contaminants at DOE Sites;
19. Technologies for Deactivation and Decommissioning;
20. Oil and Gas Technologies;
21. Advanced Power Systems;
22. Materials Research for Fossil Energy Applications;
23. Hydrogen and Fuels Technologies;
24. Hydrogen Program: Alternative Climate Friendly Process to Produce Fuels for Fuel Cells;
25. Fuel Cells for Buildings;
26. Advanced Technology for General Purpose Lighting;
27. Hybrid Electric Vehicle Technology;
28. BioProducts and BioEnergy Research;
29. Ocean Current Energy Capture;
30. Thermophotovoltaics;
31. Advanced Sensors and Data Analysis Techniques for National Security Applications;
32. Enabling Technologies for Active Optical Remote Sensor Systems;
33. Enabling Technologies for Passive Optical Remote Sensor Systems;
34. Nuclear Physics Instrumentation and Techniques;
35. Nuclear Physics Accelerator Technology;
36. Advanced Concepts and Technology for High Energy Physics Accelerators;
37. Radio Frequency Accelerator Technology for High Energy Physics Accelerators and Colliders;
38. High-Field Superconductor and Superconducting Magnet Technologies for High Energy Particle Colliders;
39. Technologies for the Next-Generation Electron-Positron Linear Collider;

40. High Energy Physics Detectors;
41. High Energy Physics Data Acquisition and Processing;
42. Fusion Plasma Science Research;
43. Enabling Technologies for Fusion Plasma Experiments;
44. Advanced Technologies and Materials for Future Fusion Energy Systems;
45. Advanced Technologies for Nuclear Energy.

The solicitation indicates that successful applicants (approximately 200 for SBIR and 15 for STTR) may receive up to $100,000 for a Phase I grant for a period of about six months for SBIR (nine months for STTR) to develop the feasibility of the idea. Phase I awardees can apply for Phase II funding up to $750,000 for SBIR ($500,000 for STTR) for those ideas with the highest potential to meet program objectives. The award of any grants under the provisions of these programs are contingent upon availability of appropriated funds.

Issued in Washington, DC on November 8, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–30360 Filed 11–19–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–008]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1999.

Take notice that on November 10, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Attachment A to the filing. CNG requests various effective dates for its proposed tariff sheets.

CNG states that the filing is being made to comply with the Commission's ''Order on Rehearing and Compliance'' issued October 27, 1999 (''Rehearing Order'').

As explained in the filing, CNG proposes various effective dates for the tariff sheets and, therefore, requests waiver of the notice requirements of Section 154.207 of the Commission's regulations in order that CNG's revised tariff sheets may become effective as proposed.

CNG states that it is complying with Ordering Paragraph (B) of the Rehearing Order which required CNG to file revised tariff sheets within 15 days of the date of issuance of the order. According to CNG, the filed tariff sheets reflect these items; (1) collection of ''Tennessee fuel costs'' in the usage component of rates effective November 1, 1998, and the waiver granted to CNG to include Hastings-related costs in the reservation component of CNG's rates; (2) separately stated and recalculated ''Base Tariff' and TCRA'' columns of CNG's relevant rate tariff sheets; and (3) prospective treatment of Hastings-related gas purchase costs in the reservation component of CNG's rates.

CNG states that copies of its letter of transmittal and enclosures are being served upon parties to this proceeding and to interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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/rim.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30313 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–003]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreements

November 16, 1999.

Take notice that on November 12, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, two transportation service agreements pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Coral Energy Resources, L.P. (Coral) and by Great Lakes and CXY Energy Marketing (U.S.A.) Inc. (CXY) (FT Service Agreements). The FT Service Agreements being filed reflect negotiated rate arrangements between Great Lakes and Coral and between Great Lakes and CXY commencing November 1, 1999.

Great Lakes states that the FT Service Agreements are being filed to implement negotiated rate contracts as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RTM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 23, 1999. 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. 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30307 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–63–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes In FERC Gas Tariff

November 16, 1999.

Take notice that on November 12, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the pro forma tariff sheet listed on Appendix A to the filing.

Great Lakes states that the pro forma tariff sheets listed on Appendix A are being filed in conformance with Section 154.202 of the Commission's regulations to implement a new Limited Firm Transportation Service under Rate Schedule LFT. Under Rate Schedule LFT, service will be firm except that service shall be unavailable for a

specified number of days, as mutually agreed to by the 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 Section 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30312 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–463–002]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

November 16, 1999.

Take notice that on November 12, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999.

First Revised Sheet No. 97
First Revised Sheet No. 97
Third Revised Sheet No. 170
Third Revised Sheet No. 171

HIOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's October 28, 1999, Letter Order that accepted HIOS' tariff filing in compliance with Commission's Order No. 587–K in Docket No. RM96–1–011.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30308 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–026]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

November 16, 1999.

Take notice that on November 10, 1999, Koch Gateway Pipeline Company (Koch) filed with the Commission a contract for disclosure of recently negotiated rate transaction. Koch also requests a waiver of the Commission's regulations in order to permit an effective date of November 1, 1999.

Special Negotiated Rate Between Koch and Koch Energy Trading

Koch states that the above filing which was submitted on October 29, 1999, has been resubmitted to comply with Section 385.2003 (Rule 20003) of the Commission's regulations.

Koch further states that copies of this filing are being served upon each all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 23, 1999. 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. 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30306 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–001]

Questar Pipeline Company; Notice of Tariff Filing

November 16, 1999.

Take notice that on November 12, 1999, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective October 28, 1999:

Substitute Third Revised Sheet No. 14
Substitute Second Revised Sheet No. 23
Substitute First Revised Sheet No. 33
Substitute Original Sheet No. 99G
Substitute Original Sheet No. 99H

On September 28, 1999, Questar filed tariff sheets to add a new Section 30 to its General Terms and Conditions to enable it to charge negotiated rates for transportation and storage services. On October 27, 1999, the Commission issued an Order Accepting (1) filing revised sheets to eliminate the tariff provision restricting access to recourse service at receipt and delivery points, (2) clarifying its intentions with respect to pass-through of additional revenue generated through negotiated rates that exceed recourse rates and (3) clarifying that adequate safeguards are in place to prevent cost-shifting from negotiated-rate shippers to recourse-rate shippers in future rate cases. This filing complied with the Commission's order.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at htt://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30310 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Reliant Energy Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

November 16, 1999.

Take notice that on November 12, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 1999:

Substitute Second Revised Sheet No.8G

REGT states that the purpose of this filing is to reflect the correction of an element of a pricing formula that was filed on October 29, 1999 in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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).

David P. Boergers,

Secretary.

[FR Doc. 99–30305 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–102–000]

Select Energy, Inc., Northeast Utilities Service Co.; Notice of Filing

November 16, 1999.

Take notice that on October 29, 1999, Select Energy, Inc., tendered for filing a copy of a settlement reached by Public Service Company of New Hampshire and Northeast Utilities (NU) with the State of New Hampshire for informational purposes in connection with a wholesale power sales agreement between Select and its affiliates, Northeast Utilities Service Company and the NU Operating Companies that was filed on October 12, 1999. This settlement was referenced in the earlier filing to the purpose of illustrating protections available to retail customers in New Hampshire from any adverse consequences of the affiliate transaction being proposed.

The Applicants state that copies of this filing have been sent to persons designated for service in the above-captioned proceeding and to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

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 Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 26, 1999. Protests will be considered by the Commission to determine 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. 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. 99–30363 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–7–001]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

November 16, 1999.

Take notice that on November 12, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing additional data and explanations supporting its proposed reduction in the storage cost credit resulting from the expansion of the Oakford storage field.

Texas Eastern states that the filing is submitted in compliance with Ordering Paragraph (B) of the ''Order Accepting And Suspending Tariff Sheets, Subject To Refund And Conditions'', issued by the Federal Energy Regulatory Commission (Commission) on October 27, 1999 [89 FERC ¶ 61,097 (1999)]. Also pursuant to Ordering Paragraph (B), reply comments are due 20 days after Texas Eastern's filing.

Texas Eastern states that copies of the filing were mailed to all affected customers and interested state commissions as well as parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30304 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–62–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1999.

Take notice that on November 10, 1999, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the revised tariff sheets listed on Appendix A attached to the filing, to be effective December 11, 1999.

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to: (1) Add an overrun charge to Rate Schedule FTS

to provide for LNG quantities received in excess of shipper's Maximum Contract Storage Capacity; (2) establish a maximum allowable saturation pressure for LNG shipments in new Section 4.2(G) of the General Terms and Conditions; (3) clarify in Section 13.2(G) of the General Terms and Conditions that the quantity received from shipper's vessel is net of boil off returned to the vessel during unloading; (4) change the notice to shipper as a prerequisite to final balancing to 15 days prior to the termination of shipper's service agreement with a term of 90 days or less in Section 6.2(A) of the General Terms and Conditions; (5) modify Section 2.2 of Rate Schedules FTS and ITS, Section 3.1 of the General Terms and Conditions and Section 1 of the form of service agreement to provide for a maximum and minimum daily delivery obligation to allow TLNG and its shippers to determine a flexible daily send-out rate; and (6) correct a punctuation error in Section 19.3 of the General Terms and Conditions.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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).

David P. Boergers,

Secretary.

[FR Doc. 99–30311 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–462–002]

U–T Offshore System, L.L.C.; Notice of Compliance Filing

November 16, 1999.

Take notice that on November 12, 1999 U–T Offshore System, L.L.C. (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1999:

Second Revised Sheet No. 47
First Revised Sheet No. 47A
Sub Thirteenth Revised Sheet No. 73
Sub Eighth Revised Sheet No. 73A
Sub Seventh Revised Sheet No. 73B

U–TOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's October 28, 1999, Letter Order that accepted UTOS' tariff rifling in compliance with Commission's Order No. 587–K in Docket No. RM96–1–011.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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).

David P. Boergers,

Secretary.

[JR Dos. 99–30309 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–498–000, et al.]

Berkshire Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 15, 1999.

Take notice that the following filings have been made with the Commission:

1. Berkshire Power Company, LLC

[Docket No. ER00–498–000]

Take notice that on November 4, 1999, Berkshire Power Company, LLC (Berkshire Power), an Exempt Wholesale Generator that owns and operates a 272-megawatt gas-fired electric generating plant (Plant) currently under construction in the town of Agawam, Massachusetts, tendered for filing a Power Marketing Agreement pursuant to which Berkshire Power sells power generated at the Plant to El Paso Power Services Company. The filing is made pursuant to the August 24, 1999 order of the Federal Energy Regulatory Commission, which granted Berkshire Power authorization to make wholesale sales of energy and capacity at market-based rates. Illinova Power Marketing, et al., 88 FERC ¶ 61,189 (1999).

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER00–406–000]

Take notice that on November 1, 1999, Western Resources, Inc. (WRI), tendered for filing revisions to the Electric Power, Transmission and Service Contract between WRI and the Kansas Electric Power Cooperative (KEPCo) dated May 26, 1993. WRI also files on behalf of its wholly-owned subsidiary Kansas Gas and Electric Company revisions to the Electric Power, Transmission and Service Contract between KG&E and KEPCo dated May 26, 1999, and files notice that effective January 1, 2000, Service Schedule E designated as Supplement No. 7 to Western Resources, Inc., FERC Electric Rate Schedule No. 264 and Pricing Schedule E designated as Supplement No. 1 to Supplement No. 7 to Rate Schedule 264 is to be canceled. WRI states that the filing makes revisions to the rate schedule currently in effect between WRI and KEPCo.

WRI requests an effective date of January 1, 2000, for these rate schedule changes.

Copies of the filing has been served upon KEPCo and the Kansas Corporation Commission.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER00–488–000]

Take notice that on November 4, 1999, New England Power Company (NEP), tendered for filing amendments to the service agreements for Network Integration Transmission Service

between NEP, Massachusetts Electric Company and Nantucket Electric Company, and between NEP and The Narragansett Electric Company, under NEP's FERC Electric Tariff, Original Volume No. 9. The amendments to the service agreements reflect updated delivery point information and certain technical corrections to the previously accepted service agreements with these customers.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER00–489–000]

Take notice that on November 4, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Redding (Redding).

A copy of the filing was served upon Redding.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Energy, Inc.

[Docket No. ER00–490–000]

Take notice that on November 4, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Sierra Pacific Power Company (Sierra Pacific).

A copy of the filing was served upon Sierra Pacific.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER00–491–000]

Take notice that on November 4, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Rocky Mountain Generation Cooperative, Inc., (RMGC).

A copy of the filing was served upon RMGC.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–492–000]

Take notice that on November 4, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Questar Energy Trading (Questar).

A copy of the filing was served upon Questar.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–493–000]

Take notice that on November 4, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Sacramento Municipal Utility District (SMUD).

A copy of the filing was served upon SMUD.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. TransAlta Centralia Generation LLC

[Docket No. ER00–494–000]

Take notice that on November 4, 1999, TransAlta Centralia Generation LLC (TACG) petitioned the Commission for acceptance of its proposed FERC Rate Schedule No. 1. TACG requests authority to make wholesale power sales, including energy and capacity, at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

TACG requests that the tendered rate schedules become effective as of the closing date of the transaction whereby TECWA Power, Inc. (TECWA) will acquire indirect ownership control over the coal-fired Centralia Steam Electric Generating Plant, by acquiring 100% of the membership interests in TACG. TACG intends to engage in wholesale power sales. TACG does not own or control and is not affiliated with any entity that owns or controls electric transmission or distribution facilities in the United States. TACG further states that it is not affiliated with any franchised electric utility in the United States.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER00–495–000]

Take notice that on November 4, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a long-term firm Transmission Service Agreement between itself and Alliant Energy (Alliant). The Transmission Service Agreement allows Alliant to receive five megawatts of firm point-to-point transmission service under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1. The term of the Agreement is ten years and three months.

Wisconsin Electric requests an effective date of October 1, 2000, in accordance with the transmission service agreement. Wisconsin Electric requests waiver of the Commission's notice requirements in order to implement the Agreement.

Copies of the filing have been served on Alliant, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Okeechobee Generating Company, LLC

[Docket No. ER00–499–000]

Take notice that on November 4, 1999, Okeechobee Generating Company, LLC (Okeechobee), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, (1) a Petition for authorization to engage in the sale of certain Ancillary Services at market-based rates; and (2) authorization to reassign transmission capacity. Okeechobee also notifies the Commission of a change in facts with respect to its previously-approved application for market-based rates.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Sierra Pacific Energy Company

[Docket No. ER00–500–000]

Take notice that on November 4, 1999, Sierra Pacific Energy Company (SPEC), tendered for filing an application for an order accepting its FERC Electric Rate Schedule No. 1, which will permit SPEC to make wholesale sales of electric power at market rates to eligible customers located outside of its two Nevada control areas and to sell ancillary services at market-based rates within the California ISO control area.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER00–502–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation tendered for filing notice that effective upon the start date of the New York Independent System Operator

(NYISO), November 18, 1999, Rate Schedule FERC No. 182 effective date March 22, 1993 and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Northeast Utilities Service Company.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER00–503–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective upon the start date of the New York Independent System Operator (NYISO), November 18, 1999, Rate Schedule FERC No. 161 effective date November 1, 1988 and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Central Vermont Public Service.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER00–504–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective upon the start date of the New York Independent System Operator (NYISO), November 18, 1999, Rate Schedule FERC No. 166 effective date November 1, 1988 and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon New England Power Company.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER00–505–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective upon the start date of the New York Independent System Operator (NYISO), November 18, 1999, Rate Schedule FERC No. 236, effective date December 15, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Cambridge Electric Light Company.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER00–506–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective upon the start date of the New York Independent System Operator (NYISO), November 18, 1999, Rate Schedule FERC No. 160, effective date November 1, 1988, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Unitil Power Corp.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER00–507–000]

Take notice that on November 5, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective upon the start date of the New York Independent System Operator (NYISO), November 18, 1999, Rate Schedule FERC No. 158 effective date May 1, 1989 and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Boston Edison Company.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER00–508–000]

Take notice that on November 5, 1999, Commonwealth Edison Company (ComEd), tendered for filing a Service Agreement for Network Integration Service (Service Agreement) and a Network Operating Agreement (Operating Agreement) between ComEd and Commonwealth Edison Company-Power Purchase Option (ComEd PPO). These agreement will govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 8, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on ComEd PPO.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Reliant Energy Indian River, LLC

[Docket No. ER00–509–000]

Take notice that on November 5, 1999, Reliant Energy Indian River, LLC (Reliant Indian River), tendered for filing a service agreement establishing Reliant Energy Services, Inc. (RES), as a customer under Reliant Indian River's market-based rate tariff.

Reliant Indian River requests an effective date of October 8, 1999, for the service agreement.

Reliant Indian River states that a copy of the filing was served on RES.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Power Service Corporation, on behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–510–000]

Take notice that on November 5, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 63 to add ACN Power, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is November 4, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Power Service Corporation, on behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–511–000]

Take notice that on November 5, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 10–6 to add Utility.com to Allegheny Power's Open Access Transmission Service Tariff. The proposed effective date under the agreement is November 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Tucson Electric Power Company

[Docket No. ER00–513–000]

Take notice that on November 5, 1999, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) service agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Select Energy, Inc.

[Docket No. ER00–514–000]

Take notice that on November 5, 1999, Select Energy, Inc. (Select), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations a Standard Offer Service Wholesale Sales Agreement between Select and The Connecticut Light and Power Company (CL&P).

An effective date of January 1, 2000, is proposed.

Copies of this filing have been sent to the Connecticut Department of Public Utility Control.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company, Select Energy, Inc.

[Docket No. ER00–515–000]

Take notice that on November 5, 1999, Northeast Utilities Service Company (NUSCO) and Select Energy, Inc. (Select), tendered for filing under Section 205 of the Federal Power Act two transition power supply agreements under which The Connecticut Light and Power Company and Western Massachusetts Electric Company may sell electric power to, or buy electric power from, Select. Applicants state that the agreements are designed to bridge potential gaps in power supply availability if certain restructuring events occur at different times.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary,

[FR Doc. 99–30364 Filed 11–19–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6479–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NESHAP Subpart M, National Emission Standard for Asbestos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP Subpart M, National Emission Standard for Asbestos; OMB Control Number 2060–0101; expires February 29, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0111.09.

SUPPLEMENTARY INFORMATION:

Title: NESHAP Subpart M National Emission Standard for Asbestos (OMB Control No. 2060–0101; EPA ICR No. 0111.09) expiring February 29, 2000. This is a request for extension of a currently approved collection.

Abstract: The revised National Emission Standards for Hazardous Air Pollutants (NESHAP), for Asbestos were proposed on January 10,1989 and promulgated on November 20, 1990. The standards apply to the following facilities: demolition and renovation of facilities; the disposal of asbestos waste; asbestos milling, manufacturing and fabricating; the use of asbestos on roadways; asbestos waste conversion facilities; and the use of asbestos insulation and sprayed-on materials. This information is being collected to assure compliance with 40 CFR part 61, subpart M.

Milling, Manufacturing, Fabricating, Waste Disposal and Waste Conversion Facilities

Owners or operators of the affected milling, manufacturing, fabricating, waste disposal, and waste conversion

facilities described must make one-time-only notifications and are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction. Record keeping includes the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including monitoring each potential source of asbestos emissions for visible emissions to the outside air and inspecting air cleaning devices to ensure proper operation. The reporting requirements include the initial notifications listed, the initial performance test results, and quarterly reports of instances when visible emissions are observed. These notifications, reports and records are required, in general, of milling, manufacturing, fabricating, and waste disposal sources subject to the NESHAP Subpart M. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and if the standard is being met. The quarterly reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

Demolition and Renovation

Owners and operators of demolitions and renovations must notify EPA in advance of the initiation of any asbestos removal work. The notice provides information on the dates of operation, the nature of the removal operation, the quantity of asbestos, and controls to be used. The reviewing authority may then inspect the source to ensure compliance with the standard. The demolition and renovation standard requires that a representative trained in the provisions of the standard be present at the facility. Evidence that the required training has been completed is required. The provisions require that all containers of asbestos waste be labeled including the name of the waste generator and the location of where the waste was generated. Owners or operators of demolitions and renovations are required to prepare and maintain records of each waste shipment as to its destination, the quantity of waste, and the date of shipment, and to furnish a copy of the record to disposal site owners or operators. The regulation also requires that the generators of asbestos waste attempt to reconcile instances in which a signed copy of the waste shipment record is not received from the disposal site and that the generator notify EPA if delivery to the disposal site cannot be confirmed.

Owners and operators of waste disposal sites are required to document all asbestos waste shipments that are received and send a copy of each record back to the generator. A record of the location and quantity of asbestos in the landfill is required as well as noting the presence and location of asbestos in the landfill property deed. Disposal site owners and operators have to report to EPA any discrepancies between the amount of waste designated on the waste shipment record and the amount actually received, as well as instances of improperly contained waste. An owner or operator of an operation in which asbestos-containing materials are spray-applied must notify EPA in advance of the spraying operation. The notice provides information on the name and address of the owner or operator, location of the spraying operation, and procedures to be followed.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Responses to this information collection are mandatory. Section 112 of the Clean Air Act as Amended provides EPA with the authority for NESHAP Standards. 40 CFR part 61, subpart M requires the collection and reporting of the emissions data/ work practice compliance. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/4/99 (64 FR 107); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Asbestos Milling, Manufacturing and Fabricating Facilities

Estimated Number of Respondents: 10,647.

Frequency of Response: On occasion, weekly, quarterly and annually.

Estimated Total Annual Hour Burden: 362,159 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0111.09 and OMB Control No. 2060–0101 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 15, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–30406 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6479–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NESHAP: Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information

Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP, Benzene Waste Operations, OMB Control Number 2060–0183, expiration date 2/29/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1541.06.

SUPPLEMENTARY INFORMATION:

Title: NESHAP: Benzene Waste Operations (OMB Control No. 2060–0183; EPA ICR No. 1541.06) expiring 2/29/2000. This is a request for extension of a currently approved collection.

Abstract: Any facility which manages a waste containing benzene must maintain records and submit reports to the Agency. There is a tiered threshold for burden. Facilities managing waste containing less than 1 megagram of benzene must simply certify to that affect and maintain documentation to support their finding. Facilities managing more than 1 megagram and less than 10 megagrams of benzene-containing waste must prepare an initial certification, test annually to verify that their waste stream still falls within this range and maintain documentation to support these findings. Facilities managing more than 10 megagrams of waste must submit quarterly and annual reports documenting the results of continuous monitoring. The Agency uses this information to determine compliance and to select plants or processes for inspection.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to Benzene Waste Operations provide information on the operation of the vapor control device and compliance with the standard. Quarterly reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to the NESHAPs. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such records. Approximately 240 sources are currently subject to the standard, and 120 of those are estimated to have more than 10 Mg/yr of benzene in the waste. It is estimated that no additional sources will become subject to the standard in the next three years. The cost of this ICR will be 405,266 dollars. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/4/99; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 71 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of chemical plants, petroleum refineries, coke by-product recovery plants, and commercial treatment, storage, and disposal facilities.

Estimated Number of Respondents: 240.

Frequency of Response: quarterly, annually.

Estimated Total Annual Hour Burden: 17,028 hours.

Estimated Total Annualized Capital O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1541.06 and OMB Control No. 2060–0183 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 9, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–30407 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00282; FRL–6395–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 6–8, 1999, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Agent GA (tabun): Ethyl *N*,*N*-dimethylphosphoramidocyanidate, Agent GB (sarin): *O*-isopropyl methylphosphonofluoridate, Agent GD (soman): *O*-pinacolyl methylphosphonofluoridate, Agent GF: *O*-cyclohexyl-methylfluorophosphonate, Agent HD (sulfur mustard): Bis(2-chloroethyl)sulfide, Agent VX: *O*-ethyl *S*-(2-diisopropylaminoethyl) methylphosphonothiolate, bromine, 1,2-dichloroethylene, ethylene oxide, methyl isocyanate, otto fuel (propylene glycol dinitrate major component) phosphine, 1,1,1-trichloroethane, and uranium hexafluoride. There will also be a discussion of the review and comment by the National Academy of

Sciences/National Research Council (NAS/NRC) Subcommittee on certain Interim AEGL values previously published in the **Federal Register** of October 30, 1997 (62 FR 58840–58851). These chemicals include: Aniline, arsine, chlorine, 1,1-dimethylhydrazine, 1,2-dimethylhydrazine, fluorine, hydrazine, and methyl hydrazine. There may also be a discussion regarding any further comments on the Standing Operating Procedures.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on December 6, 1999; from 8:30 a.m. to 5 p.m. on December 7, 1999; and from 8:30 a.m. to 1 p.m. on December 8, 1999.

ADDRESSES: The meeting will be held at the U. S. Department of Transportation (DOT), DOT Headquarters, Nassif Building, Rooms 6200–6204, 400 7th St., SW., Washington, DC (L'Enfant Center Metro stop). Visitors should bring a photo ID for entry into the building and should contact the Designated Federal Officer (DFO) to have their names added to a security entry list. Visitors must enter the building at the Southwest Entrance/Visitor's Entrance, 7th and E Sts. Quadrant.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, DFO, Office of Pollution Prevention and Toxics (7406), 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00282. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Busniess Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under ''FOR FURTHER INFORMATION CONTACT.''

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for March, 2000. The exact date, location of this meeting, and chemicals to be discussed will be published in a future **Federal Register** notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: November 15, 1999.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–30412 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6479–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, Bull Moose Tube Superfund Site, Gerald, MO

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9622(h). This settlement is intended to resolve the liability of the Bull Moose Tube Company for response costs incurred at the Bull Moose Tube Superfund Site, 401 E. Industrial Drive, Gerald, Missouri.

DATES: Written comments must be provided on or before December 22, 1999.

ADDRESSES: Comments should be addressed to Steven L. Sanders, Assistant Regional Counsel, Office of Regional Counsel, United States

Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101 and should refer to: *In the Matter of Bull Moose Tube Superfund Site,* EPA Docket No. CERCLA–7–2000–0001.

The proposed administrative cost recovery settlement may be examined in person at the United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Kathy Robinson, Regional Hearing Clerk, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913) 551–7567.

FOR FURTHER INFORMATION CONTACT: Steven L. Sanders, Assistant Regional Counsel, Office of Regional Counsel, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913) 551–7010.

Dated: November 8, 1999.

Michael J. Sanderson,

Director, Superfund Division, Region VII.

[FR Doc. 99–30405 Filed 11–19–99; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

[BM–10–NOV–99–02]

Policy Statement on Borrower Privacy

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: The Farm Credit Administration (FCA) Board adopted a policy statement that requires Farm Credit System (FCS or System) institutions to formally inform borrowers that their nonpublic personal financial information is protected by regulation. The policy statement requires System institutions to inform new borrowers at loan closing of the FCA regulations on releasing borrower information and to address this issue in the Annual Report to Shareholders.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Senior Policy Analyst, Office of Policy Analysis, Farm Credit Administration, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement on borrower privacy is set forth below in its entirety:

FCA Board Action on Policy Statement on Borrower Privacy, BM–10–NOV–99–02, FCA–PS–77

Effective Date: 10–Nov–99.

Effect on Previous Actlon: None.

Source of Authority: Section 5.9 of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

The Farm Credit Administration Board believes that consumer privacy is an important component of individual freedom. The FCA Board also realizes that the free flow of information is necessary for the functioning of our democratic society and market economy. As cooperative institutions organized using the principles of democracy and free markets, these same issues are important to Farm Credit System (System) institutions and their shareholders. Moreover, since Farm Credit institutions are owned and directed by the farmers, ranchers and cooperatives who borrow from them, the privacy and security of customer information is vital to the System's continued dependability and long-term success.

Recently we have witnessed the proliferation of businesses that specialize in the collection and dissemination of personal financial information. These ''information brokers'' market public and nonpublic information to various customers. Advances in computer technology have enabled ''information brokers'' to access and distribute personal financial information easily, cheaply, and without a consumer's knowledge or consent.

Since 1972, FCA regulations have required that borrower information be held in strict confidence by Farm Credit institutions, their directors, officers and employees. Our regulations at 12 CFR Part 618, Subpart G specifically restrict Farm Credit institution directors and employees from disclosing information not normally contained in published reports or press releases about the institution or its borrowers or members. These regulations also provide Farm Credit institutions clear guidelines for protecting their borrowers' nonpublic personal information.

The FCA Board believes that Farm Credit institutions have a responsibility to inform their shareholders of their obligation to protect shareholders' nonpublic personal information. Therefore, Farm Credit institutions should inform new borrowers at loan closing of the FCA regulations on releasing borrower information. Farm Credit institutions should also address this information in the Annual Report to Shareholders. The implementation of these measures will ensure that new and existing borrowers are aware of the privacy protections afforded them through FCA regulations and Farm Credit System institution efforts.

Adopted this 10th day of November, 1999 by order of the Board.

Dated: November 16, 1999.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 99–30365 Filed 11–19–99; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

November 10, 1999.

FCC To Hold Open Commission Meeting Thursday, November 18, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 18, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Mass Media	Title: Implementation of Video Description of Video Programming. Summary: The Commission will consider a Notice of Proposed Rulemaking concerning the accessibility of video programming to persons with visual disabilities.
2	Common Carrier	Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147); and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. Summary: The Commission will consider a Third Report and Order in CC Docket No. 98–147 and a Fourth Report and Order in CC Docket 96–98 concerning the availability and deployment of advanced services and the application of Section 251 to advanced services.
3	Wireless Telecommunications.	Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143).

Item No.	Bureau	Subject
4	Office of Engineering and Technology.	Summary: The Commission will consider a Second Memorandum Opinion and Order concerning petitions for reconsideration and clarification of the wireless E911 rules. Title: Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium. Summary: The Commission will consider a Policy Statement concerning spectrum management for the new millennium.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itis.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–30438 Filed 11–17–99; 4:50 pm]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 7, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Steven D. McLaen, Forman, North Dakota; David L. Sorgatz, Napoleon, North Dakota; and Bruce Wentz, Napoleon, North Dakota; to acquire voting shares of Napoleon Bancorporation, Inc., Napoleon, North Dakota, and thereby indirectly acquire voting shares of Stock Growers Bank, Napoleon, North Dakota.

Board of Governors of the Federal Reserve System, November 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30295 Filed 11–19–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 7, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Bradley Place Heath, Palestine, Illinois; to acquire additional voting shares of First National Bancshares in Newton, Inc., Newton, Illinois, and thereby indirectly acquire additional voting shares of First National Bank in Newton, Newton, Illinois.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. James O. Pohlad, Edina, Minnesota; Robert C. Pohlad, Edina, Minnesota; William M. Pohlad, Minneapolis, Minnesota; Donald Benson, Wayzata, Minnesota; and Raymond Zehr, Jr., Edina, Minnesota, as trustees for The 2000 Irrevocable Security Trust No. 1 of Carl R. Pohlad and the 2000 Irrevocable Trust No. 2 of Carl R. Pohlad; to acquire voting shares of Marquette Bancshares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire voting shares of Marquette Bank, N.A., Golden Valley, Minnesota; Marquette Capital Bank, N.A., Minneapolis, Minnesota; Marquette Bank Cedar Rapids, Cedar Rapids, Iowa; Marquette Bank Clinton, Clinton, Iowa; Marquette Bank Oelwein, N.A., Oelwein, Iowa; Marquette Bank Illinois, Galesburg, Illinois; Marquette Bank Morrison, Morrison, Illinois; Meridian Capital Bank, N.A., Milwaukee, Wisconsin; First National Bank and Trust Co. of Baraboo, Baraboo, Wisconsin; Marquette Bank Nebraska, N.A., O'Neill, Nebraska; and Marquette Bank South Dakota, N.A., Sioux Falls, South Dakota.

Board of Governors of the Federal Reserve System, November 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30397 Filed 11–19–99; 8:45 am]

BILLING CODE 6210–01–F

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Greater Bay Bancorp, Palo Alto, California; to merge with Mt. Diablo Bancshares, Danville, California, and thereby indirectly acquire Mt. Diablo National Bank, Danville, California.

2. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Prime Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Prime Bank, Houston, Texas. Comments regarding this application must be received not later than December 7, 1999.

Board of Governors of the Federal Reserve System, November 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30294 Filed 11–19–99; 8:45 am]

BILLING CODE 6210–01–F

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to merge with Triangle Bancorp, Inc., Raleigh, North Carolina, and thereby indirectly acquire Triangle Bank, Raleigh, North Carolina, and Bank of Mecklenburg, Charlotte, North Carolina.

In connection with this application, Applicant also has applied to acquire Coastal Leasing LLC, Greenville, North Carolina, and thereby engage in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Team Financial ESOP; Team Financial Acquisition Subsidiary, Inc.; and Team Financial, Inc., all of Paola, Kansas; to acquire 100 percent of the voting shares of Fort Calhoun Investment Co., Fort Calhoun, Nebraska, and thereby indirectly acquire Fort Calhoun State Bank, Fort Calhoun, Nebraska.

In connection with this application, Applicants also have applied to acquire Fort Calhoun Investment Co., Fort Calhoun, Nebraska, and thereby engage in insurance activities in a town of less than 5,000 in population, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30398 Filed 11–19–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hometown Banc Corp., Grand Island, Nebraska; to retain voting shares of Hometown Banc Corp., Grand Island, Nebraska, and thereby indirectly retain voting shares of Security State Bank, Sumner, Nebraska, and thereby engage in the operation of a thrift, pursuant to § 225.28(b)(4)(ii) of Regulation Y upon the conversion of Security State Bank to a thrift charter. Security State Bank will be renamed Security Bank, Sumner, Nebraska.

Board of Governors of the Federal Reserve System, November 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30399 Filed 11–19–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

[GAO/AIMD–00–21.3.1]

Standards for Internal Control in the Federal Government

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: The General Accounting Office (GAO) has issued a revised ''Standards for Internal Control in the Federal Government,'' dated November 1999. This publication updates and replaces the 1983 ''Standards for Internal Controls in the Federal Government,'' commonly referred to as the ''Green Book.'' The new standards incorporate the concepts of the existing standards and provide greater recognition to the impact of information technology, human capital management, and private sector guidance on internal control. The new standards are intended to assist federal agency program and financial managers achieve the internal control objectives of their organizations. The standards are effective for fiscal year 2000 and apply to reports required by the Federal Managers' Financial Integrity Act (FMFIA) for that year.

DATES: November 1999.

ADDRESSES: Copies of the internal control standards are available by (1) pick-up at Document Distribution, U.S. General Accounting Office, Room 1100, 700 4th Street, NW. (corner of 4th and G Streets, NW.), Washington, DC; (2) Mail from U.S. General Accounting Office, P.O. Box 37050, Washington, DC 20013; (3) Phone at 202–512–6000 or FAX at 202–512–6061 or TDD at 202–512–2537; or (4) On GAO's homepage on the Internet at (http://www.gao.gov) under the link to ''Special Publications.''

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Gramling, Director, Corporate Audits and Standards, Accounting and Information Management Division, U.S. General Accounting Office, Room 5089, 441 G Street, NW., Washington, DC 20548, or by telephone at 202–512–9406.

SUPPLEMENTARY INFORMATION: Beginning with the Accounting and Auditing Act of 1950, agency heads have been required to establish and maintain effective internal control. Over the years, GAO had issued numerous publications to assist agencies in establishing and maintaining effective internal control. In 1982, the Federal Managers' Financial Integrity Act required agencies to evaluate their systems of internal control on a periodic basis using guidance issued by the Office of Management and Budget (OMB Circular A–123, ''Management Accountability and Control,'' revised June 21, 1995) and to report on whether their systems conform to the internal control standards. The Act also amended the Accounting and Auditing Act of 1950 requiring GAO to promulgate internal control standards. In 1983, GAO drew on its previously issued guidance and experts throughout government, the private sector, and the academic communities to develop and issue the required ''Standards for Internal Controls in the Federal Government.''

Although, those standards remain conceptually sound and are used throughout the federal government, several factors indicated a need to revise and update the standards. The revision and update was performed primarily in response to (1) the effect of rapid advances in information technology management upon internal control, (2) a greater recognition of the role of human capital management as an important factor in internal control, and (3) the need to implement updates of the standards used in the private sector where useful in the federal government environment. The new standards also reflect the increased emphasis upon internal control inherent in important legislation such as the Chief Financial Officers Act of 1990, the Government Performance and Results Act of 1993, and the Federal Financial Management Improvement Act of 1996. These standards provide the overall framework for federal agencies to establish and maintain internal control and to identify and address major performance and management challenges and areas at greatest risk for fraud, waste, abuse, and mismanagement. They will be useful to both program and financial managers in all federal departments and agencies in meeting their missions and objectives and in achieving financial accountability.

The format of the new standards and the concepts expressed by them are consistent with those contained in the document ''Internal Control-Integrated Framework'' published in 1992 by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The COSO document is widely accepted for use in the private sector. The GAO document defines internal control as an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: (a) Effectiveness and efficiency of operations, (b) reliability of financial reporting, and (c) compliance with applicable laws and regulations. There are five broad standards that define the minimum level of quality acceptable for internal control in government and provide a basis against which agency internal control can be evaluated. These five standards cover the areas of (1) Control Environment, (2) Risk Assessment, (3) Control Activities, (4) Information and Communications, and (5) Monitoring.

We encourage wide distribution and application of the new standards for internal control throughout the federal government.

Jeffrey C. Steinhoff,

Acting Assistant Comptroller General for Accounting and Information Management.

[FR Doc. 99–30354 Filed 11–19–99; 8:45 am]

BILLING CODE 1610–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 10 a.m.–4 p.m., December 16, 1999.

Place: Room 305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Workgroup on the National Health Information Infrastructure will discuss progress the Workgroup has made on narrative descriptions of various stakeholder views on the national health information infrastructure, plan for next steps, and attend to other business as required.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey

Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 260–2652, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where an agenda for the meeting will be posted when available.

Dated: November 15, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–30350 Filed 11–19–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), *Joint Meeting:* Subcommittee on Standards and Security and Workgroup on Computer-based Patient Records.

Time and Date: 9 a.m. to 5 p.m., December 9, 1999; 9 a.m. to 5 p.m., December 10, 1999.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: On December 9, the Subcommittee and Working Group will review previous testimony and draft recommendations for a report to the Secretary. On December 10, they will discuss the Notice of Proposed Rule Making (NPRM) on claims attachments (if published), draft comments on the RPRM for full HCVHS review, discuss a process for assessing implementations of HIPAA, and discuss issues for year 2000.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, #602, Rockville, MD 20852, phone: 301–594–1483, x1052; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the HCVHS home page of the HHS website: *http://www.ncvhs,hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: November 15, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–30351 Filed 11–19–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Service announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Executive Subcommittee.

Time and Date: 1 a.m.–5:30 p.m., December 7, 1999.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Executive Subcommittee will be planning for the February meeting of the NCVHS, discussing the Notice of Proposed Rule Making (NPRM) on Standards for Privacy of Individually Identifiable Health Information, and attending to other business as required.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where an agenda for the meeting will be posted when available.

Dated: November 15, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–30352 Filed 11–19–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 10–12 noon, November 23, 1999.

Place: Conference Call, Participants Dial-in Number: 1–888–296–1938, Participants Code: 336102.

Status: Open.

Purpose: During this conference call, the Subcommittee will discuss the Notice of Proposed Rule Making (NPRM) on Standards for Privacy of Individually Identifiable Health Information and develop recommendations for the full Committee.

Notice: This conference call is open to the public using the participants' dial-in-telephone number and participants' code, but access may be limited by the number of available telephone lines.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Gail Horlick, M.S.W., J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of Research and Demonstrations, Program Analyst, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–62, Atlanta, Georgia 30333, telephone (404) 639–8345; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs,* where further information will be posted when available.

Dated: November 16, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–30353 Filed 11–19–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2607]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 22, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421 (OMB Control No. 0910–0171—Extension)

Under section 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(e)), the Secretary of the Department of Health and Human Services may, under certain conditions, require by regulation that a device be restricted to sale, distribution, or use only upon authorization of a licensed practitioner or upon other prescribed conditions. Sections 801.420 and 801.421 (21 CFR 801.420 and 801.421) implement this authority for hearing aids, which are restricted devices. The regulations require that the manufacturer or distributor provide to the user data useful in selecting, fitting, and checking the performance of a hearing aid through distribution of a user instructional brochure. The user instructional brochure must also contain technical data about the device, instructions for its use, maintenance and care, a warning statement, a notice about the medical evaluation requirement, and a statement if the aid is rebuilt or used.

Hearing aid dispensers are required to provide the prospective user, before the sale of a hearing aid, with a copy of the user instructional brochure for the hearing aid model that has been, or may be, selected for the prospective user and to review the contents of the brochure with the buyer. In addition, upon request by an individual who is considering the purchase of a hearing aid, the dispenser is required to provide a copy of the user instructional brochure for that model hearing aid or the name and address or telephone number of the manufacturer or distributor from whom a user instructional brochure for the hearing aid may be obtained. Under conditions of sale of hearing aid devices, manufacturers or distributors shall provide sufficient copies of the user instructional brochure to sellers for distribution to users and prospective users and provide a copy of the user instructional brochure to any health care professional, user, or prospective users who request a copy in writing. The regulations also require that the patient provide a written statement that he or she has undergone a medical evaluation within the previous 6 months before the hearing aid is dispensed, although informed adults may waive the medical evaluation requirement by signing a written statement. Finally, the regulation requires that the dispenser retain for 3 years copies of all physician statements or any waivers of medical evaluations.

The information obtained through this collection of information is used by FDA to ensure that hearing aids are sold and used in a way consistent with the public health.

The information contained in the user instructional brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser. The data is used by these health care professionals to evaluate the suitability of a hearing aid, to permit proper fitting of it, and to facilitate repairs. The data also permits the comparison of the performance characteristics of various hearing aids. Noncompliance could result in a substantial risk to the hearing impaired because the physician, audiologist, or dispenser would not have sufficient data to match the aid to the needs of the user.

The respondents to this collection of information are hearing aid manufacturers, distributors, dispensers, health care professionals, or other for-profit organizations.

In the **Federal Register** of August 25, 1999 (64 FR 46395), the agency requested comments on the proposed collection of information.

FDA received one comment from an association representing hearing aid manufacturers. The comment noted that the association had commented in 1998 on this collection of information and had suggested through a limited survey of its members that its companies produced 18 models and not the 5 estimated by FDA and that it took 136 hours for a company to prepare a User Instructional Brochure. The comment noted that FDA used a figure of 102 hours and failed to address where this figure came from.

FDA previously addressed this comment in the **Federal Register** of October 26, 1998 (63 FR 57128). FDA agreed with the comment with respect to the number of models, and FDA raised its estimate in that respect. FDA noted, however, that the comment failed to take into account that FDA was estimating an annual burden and not every model required a new brochure every year. FDA further noted that much of the information in the brochure remains the same from one permutation of a model to another and, therefore, it would not take 136 hours to develop every brochure. FDA estimated that, for about half of the models, it would only take one-half of 136 hours or 68 hours to modify the brochure. From this, FDA estimated that the average preparation time for all brochures would be 102 hours. FDA believes that this estimate is still appropriate.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.420(c)	40	24	960	102	97,920
801.421(b)	9,900	162	1,600,000	0.30	480,000
801.421(c)	9,900	5	49,700	0.17	8,449
Total					586,369

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.421(d)	9,900	162	1,600,000	0.25	400,000
Total					400,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 801.420(c) estimate assumes that 40 hearing aid manufacturers or distributors each will distribute 5 different models of hearing aids. Thus, the 40 hearing aid manufacturers or distributors will provide 5 different user instructional brochures to sellers for distribution to prospective users and users. The completion of each user instructional brochure is estimated to require 102 staff hours.

Section 801.421(b) estimate assumes that 9,900 hearing aid dispensers will have 162 sales annually. For all such sales, the dispenser must provide the prospective user a copy of the user instructional brochure and the opportunity to read and review the contents with him or her orally, or in the predominant method used during the sale. FDA estimates that this exchange will involve .30 staff hours.

Section 801.421(c) estimate assumes that 40 hearing aid manufacturers or distributors and 9,900 dispensers will provide copies of the user instructional brochure to any health care professional, user, or prospective user who requests a copy in writing. It is estimated that five written requests for copies of the brochures will be received by each hearing aid manufacturer or distributor and dispenser annually. It is estimated that each request for a brochure will take .17 staff hours to complete. This effort consists of the hearing aid manufacturer or distributor or hearing aid dispenser locating the appropriate user instructional brochure for the specific model and mailing the brochure to the requester.

Section 801.421(d) recordkeeping estimate assumes that 9,900 hearing aid dispensers will each retain 162 records. Each record documents the dispensing of a hearing aid to a hearing aid user. The recordkeeping entry is estimated to require 0.25 staff hours.

Dated: November 10, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–30302 Filed 11–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4491]

Reuse of Single Use Devices; FDA's Proposed Strategy; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Reuse of Single Use Devices—FDA's Proposed Strategy. The topic to be discussed is the current practice of reprocessing and reusing devices that are labeled, or otherwise intended, for only one use and FDA's proposed strategy to address concerns regarding this practice.

Date and Time: The meeting will be held on December 14, 1999, 8 a.m. to 5:30 p.m.

Location: The meeting will be held at the University of Maryland Auditorium, 9640 Gudelsky Dr., Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Heather Howell, Center for Devices and Radiological Health (HFZ–205), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD, 20850, 301–594–3252, FAX 301–443–7185, Internet site: http://www.fda.gov/cdrh/reuse, e-mail: reuse@cdrh.fda.gov.

Registration and Requests for Oral Presentations: Please register online on the Internet at http://www.fda.gov/cdrh/reuse by December 1, 1999. There is no charge to attend this meeting, but advance registration is requested due to limited seating. Those desiring to make formal oral presentations should submit a brief statement of the general nature of their presentation, the names and addresses of the proposed participants, and an indication of the approximate time requested to make their presentation. The time allotted for each presentation is limited.

Written comments may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by December 1, 1999.

If you need special accommodations due to a disability, please contact Heather Howell at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

I. Background

FDA announced the availability of a document entitled ''FDA's Proposed Strategy on Reuse of Single-Use Devices'' in the **Federal Register** of November 3, 1999 (64 FR 59782). The document presents the agency's current thinking about the best way to address the concerns regarding the practice of reprocessing and reusing devices that are labeled, or otherwise intended, for only one use. The agency is interested in discussing this proposed strategy, and it is soliciting comments, proposals for alternative approaches, and information on this issue.

II. Electronic Access

In order to receive ''FDA's Proposed Strategy on Reuse of Single Use

Devices'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 800–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 2525 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of ''FDA's Proposed Strategy on Reuse of Single Use Devices'' may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes ''FDA's Proposed Strategy on Reuse of Single Use Devices,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

Dated: November 12, 1999.

David W. Feigal, Jr.,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–30303 Filed 11–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1079–N]

Medicare Program; December 13, 1999, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 13, 1999, from 8:00 a.m. until 5 p.m., e.s.t.

ADDRESSES: The meeting will be held in the Multi-purpose Room, Room 705–A, 7th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson, Richard Bronfman, Wayne R. Carlsen, Mary T. Herald, Sandral Hullett, Stephen A. Imbeau, Jerilynn S. Kaibel, Marie G. Kuffner, Derrick K. Latos, Dale Lervick, Sandra B. Reed, Susan Schooley, Maisie Tam, Victor Vela, and Kenneth M. Viste, Jr. The Council chairperson is Marie G. Kuffner.

Council members will be updated on the, Physician Fee Schedule (Practice Expense) Issues, Impact of the Balanced Budget Act of 1997, and New Coverage Process-How It Is Working.

The agenda will provide for discussion and comment on the following topics:

- New Initiatives in Provider Education/Communication.
- Provider Involvement in Beneficiary Education.
- Co-payment Follow Up.
- Physician/Beneficiary Interaction in Medicare+Choice.
- Program Fraud and Abuse Issues.

For additional information and clarification on the aforementioned topics, call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, November 29, 1999, to schedule the presentation. Testimony is limited to listed agenda issues only. The number of oral presentations may be limited by the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, December 6, 1999, for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 10, 1999.

Nancy-Ann DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–30441 Filed 11–19–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request, Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Behavioral and Social Sciences Research, Office of the Director, National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review

and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 24, 1999, pages 28001–28002, and allowed 60 days for public comment. Two public comments were received in response to the notice, both requesting additional general information on the project. No comments were received regarding cost or hour burden for respondents. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Training Tomorrow's Scientists: Linking Minorities and Mentors through the Web. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This activity will increase the visibility of the National Institutes of Health's Research Supplements for Underrepresented Minorities program. The primary objective is to ensure in the coming decades a concentration of minority researchers who will address behavioral and social factors important in improving the public health and eliminating racial disparities. The Office will design a web site that will link promising minorities at the high school through junior faculty level with senior NIH-funded researchers who are willing to mentor. The activity is consistent with the Congressional mandate for the Office to enhance behavioral and social science training opportunities at NIH, especially for minorities. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Students (high school, college, graduate school), postdoctoral fellows, junior faculty, and NIH researchers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 4,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .49 and *Estimated Total Annual Burden Hours Requested:* 1960. The annualzied cost to respondents is estimated at: 0. There are no Capital Costs, Operating Costs, or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Paula Skedsvold, Science Policy Officer, Office of Behavioral and Social Sciences Research, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 31, Room B1C32, Bethesda, MD 20892, or call non-toll-free number (301) 435–6780 or E-mail your request,including your address to: skedsvop@od.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before December 22, 1999.

Dated: November 12, 1999.

Virginia Cain,

Special Assistant to the Director, Office of Behavioral and Social Sciences Research, Office of the Director, National Institutes of Health.

[FR Doc. 99–30418 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: ''Extracellular cAMP-Dependent Protein Kinase in the Diagnosis and Prognosis of Cancer and Methods of Treatment''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J.R. Dixon, at the Office of Technology Transfer, National Institutes of Heath, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E–Mail; jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION:

Invention Title: ''Extracelular cAMP-Dependent Protein Kinase in the Diagnosis and Prognosis of Cancer and Methods of Treatment''.

Inventor: Dr. Yoon S. Cho-Chung (NCI).

U.S. Patent Application Serial No.: 60/140,288 filed June 18, 1999.

DHHS Ref. No.: E–110–99/0

Abstract

It has been discovered that expression of extracellular-PKA (ECPKA) is serum is a measure of hormone-dependency of breast cancer. In view of this discovery, this invention provides a method of determining whether or not breast cancer in a give patient is hormone-dependent or hormone-independent. Current methods of determining hormone-dependency in breast cancer involve biopsy and examination of the breast cancer tissue for the presence of estrogen and/or progesterone receptors, which can be detected in the tissue by an immunohistochemical assay using a monoclonal antibody, by a biochemical assay using dextran-coated charcoal, and by other means. Such methods are disadvanageous due to inaccuracies (As much as 30–40% of results are false positives or false negatives), a lack of

consensus as to the minimum number of cells required to have an estrogen and/or progesterone receptor for determination of hormone-dependent cancer, and required biopsy. The present invention seeks to overcome such disadvantages by providing a more accurate assay for the hormone dependency or independency of breast cancer which does not require biopsy.

The determination of whether a breast cancer is hormone-dependent or hormone-independent has meaningful implications for the selection of treatment strategy and the prognosis of the disease. For example, if the breast cancer is hormone-dependent, the treatment may include hormone therapy involving administration of anti-estrogen drugs, the destruction of ovary function, or the removal of the ovaries. In the case of hormone-independence the absence of estrogen receptors in the primary tumor indicates a higher rate of recurrence and a shorter survival rate. In this instance the treatment will likely include the administration of chemotherapeutic drugs.

Technology

This invention provides a method of diagnosing cancer in a patient. The method involves assaying a sample of serum or other body fluids from the patient for the presence of ECPKA. An elevated level of ECPKA in the sample compared to the level in a control sample is indicative of cancer in the patient. The invention also includes a method of assaying a sample of serum or other body fluids from the patient for the presence of ECPKA in which (i) A reduction in the level of ECPKA in the sample as compared to the level in an earlier sample from the patient indicates an improvement in the patient's prognosis, (ii) no change in the level of ECPKA in the sample as compared to the level of ECPKA in an earlier sample from the patient, indicates no change in the patient's condition, or (iii) an increase in the level of ECPKA in the sample as compared to the level in an earlier sample from the patient, indicating a worsening of the patient's condition. As alluded to above, the invention also involves a method of determining whether a diagnosed breast cancer is hormone-dependent or hormone-independent. This method involves assaying a serum or other body fluid sample from the patient for the presence of ECPKA versus a control sample. An elevated level of ECPKA indicates that the breast cancer is hormone-dependent. Finally, the invention provides a method for the treatment of cancer. This method involves reducing the level of ECPKA by delivering the RIIβ subunit of PKA–II to target cancer cells to down-regulate the expression of ECPKA and inhibit cancer cell growth.

The above mentioned Invention is available, including any available foreign intellectual property rights, for licensing.

Dated: November 15, 1999.

Jack Spiegel,

Director, Division of Technology Development & Transfer, Office of Technology Transfer.

[FR Doc. 99–30341 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 2, 1999, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include but are not limited to (1) a Report on the Burden of Illness Workshop; (2) a Preliminary Report of the Government Performance and Results Act Review Group; (3) an Update on Stem Cell Research; and (4) a Report from the Panel on Scientific Boundaries for Review. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than November 29, 1999.

Dated: November 12, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–30337 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 meeting.

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 the 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: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: December 2–3, 1999.

Time: 7 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—EPA 643A, Bethesda, MD 20892–7405, 301/496–2330.

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. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 12, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30340 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: December 6, 1999.

Open: 8 am to 12 pm.

Agenda: To review the National Cancer Program: Then, Now, and in the Future.

Place: National Institutes of Health, 31 Center Drive, Building 31C, Conference Room 10, Bethesda, MD 20892.

Closed: 1 pm to 5 pm.

Agenda: To review and evaluate agency perspectives on the National Cancer Program and review questions and agendas for future meetings in 2000.

Place: National Institutes of Health, 31 Center Drive, Building 31C, Conference Room 10, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, Executive Secretary, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, (301) 496–1148.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.3997, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30415 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and the 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 Heart, Lung, and Blood Institute Special Emphasis Panel Pediatric Hydroxyurea Phase III Clinical Trail (BABYHUG) Coordinating Centers.

Date: December 16, 1999.

Time: 7:00 PM to 10:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: S. Charles Selden, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Pediatric Hydroxyurea Phase III Clinical Trail (BABYHUG) Coordinating Centers.

Date: December 17, 1999.

Time: 8:00 AM to 5:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: S. Charles Selden, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 15, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30332 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 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: National Heart, Lung, and Blood Institute Special Emphasis Panel Nocturnal Asthma, Chronobiology and Sleep.

Date: November 16, 1999.

Time: 8:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, (301) 435–0280.

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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93. 838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 15, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30333 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

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 552(b)(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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 6:00 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Pace: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Branch, NINS/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: November 15, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30334 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

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: November 30, 1999.

Time: 2:30 PM to 4:30 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: November 15, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30335 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 29, 1999.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaa.nih.gov.

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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: December 14, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Ronald Suddendorf, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273 Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 12, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30338 Filed 11–19–99; 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 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: National Institute on Aging Special Emphasis Panel, Female Reproductive Aging: The Role of Estrogen.
Date: November 30, 1999.
Time: 11:00 AM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: James P. Harwood, Deputy Chief, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Training in the Epidemiology of Aging.
Date: November 30, 1999.
Time: 1:30 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 12, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30339 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, RFA Ai–99–002: Multicenter AIDS Cohort Study: Pathogenesis Research Laboratories.
Date: December 8, 1999.
Time: 1 pm to 4:30 pm.
Agenda: To review and evaluate cooperative agreement applications.
Place: 6700–B Rockledge Drive, Rm. 2151, Bethesda, MD 20892–7616 (Telephone Conference Call).
Contact Person: Allen C. Stoolmiller, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2500.

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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 16, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30416 Filed 11–19–99; 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: November 29, 1999.
Time: 2:30 PM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jo Pelham, 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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 1, 1999.
Time: 3:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

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: December 7, 1999.
Time: 10:00 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 7, 1999.
Time: 1:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcia Steinberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 7, 1999.
Time: 2:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225. politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 8, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, sipej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (03)M.
Date: December 8, 1999.
Time: 2:30 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1999.
Time: 10:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.
Contact Person: Jeanne N,. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room. 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1999.
Time: 2:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: H. Mac. Stiles, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM–2 O1.
Date: December 9, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1999.
Time: 3:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1999.
Time: 3:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 10, 1999.
Time: 2:00 PM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892 (301) 435–1225, politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 10, 1999.
Time: 12:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husain, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

(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: November 15, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30330 Filed 11–19–99; 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 meeting.

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: November 16–17, 1999.
Time: 3:00 PM to 10:30 AM.
Agenda: To review and evaluate contract proposals.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Angela M. Pattatucci, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–435–1775.

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 ZRG1–BDCN–1 (02)B.
Date: November 18, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Joe Marwah, 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: November 18, 1999.
Time: 3:00 PM to 4:00 PM.
Agenda: To review and evaluate contract grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Scott Osborne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301–435–1782.

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: November 15, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30331 Filed 11–19–99; 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 the 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 Review Special Emphasis Panel.
Date: November 18, 1999.
Time: 11:30 am to 11:45 am.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, spiej@csr.nih.gov.

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 Review Special Emphasis Panel.
Date: November 22, 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: Anthony C. Chung, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1850.

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: November 12, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30336 Filed 11–19–99; 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 of 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: November 29, 1999.
Time: 11 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: David J. Remondin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov.

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: December 8, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington-National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 13, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington-National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: J. Terrell Hoffeld, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 13, 1999.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 13, 1999.
Time: 3:30 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 13, 1999.
Time: 12:30 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: Hilton National Airport Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 14, 1999.
Time: 1 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B. Chen, Scientific Review Administrator, Center for Scientific review, National Institutes of health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

(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: November 16, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–30417 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Recombinant DNA Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: The purpose of this document is to inform the public of proposed changes to the NIH Guidelines related to the reporting of serious adverse events involving human gene transfer research. This notice describes a proposed action to amend the NIH Guidelines regarding the reporting and public disclosure of serious adverse events.

DATES: The public is encouraged to submit written comments on these proposed changes to the NIH Office of Recombinant DNA Activities (ORDA). Written comments may be submitted to NIH/ORDA in paper or electronic form. Written comments received by December 3, 1999, will be reproduced and distributed to the RAC for consideration at its December 8–10, 1999, meeting.

All comments received in response to this notice will be considered by the NIH and will be available for public inspection in the NIH/ORDA office weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions, or require additional information about these proposed changes to the NIH Guidelines, please contact the Office of Recombinant DNA Activities (ORDA) by e-mail at: ci4e@nih.gov, or telephone at: 301–496–9838. Written comments on these proposed changes to the NIH Guidelines can be submitted by e-mail to: ci4e@nih.gov, fax to: 301–496–9839, or mail to: the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010.

For additional information about the December 8–10, 1999, RAC meeting at which these proposed changes will be deliberated, please visit the NIH/ORDA web site at: http://www.nih.gov/od/orda/.

SUPPLEMENTARY INFORMATION: Appendix M–VII–C of the NIH Guidelines requires Principal Investigators (or their designated sponsors) to report serious adverse events immediately to the local Institutional Review Board (IRB), Institutional Biosafety Committee (IBC), Office for Protection from Research Risks (OPRR) (if applicable), NIH/ORDA, and Food and Drug Administration (FDA).

All non-NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an institution that receives NIH support for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in: (i) Suspension, limitation, or termination of NIH funds for recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

All gene transfer clinical studies are subject to FDA regulations found in volume 21 of the Code of Federal Regulations (CFR), including specific requirements at 21 CFR 312.32 related to adverse events.

The immediate reporting of serious adverse events to NIH/ORDA by investigators allows rapid notification of the RAC. This, in turn, allows notification, as appropriate, of other IBCs, IRBs, and Principal Investigators in the field. Immediate reporting also provides a unique mechanism for early recognition of trends in the occurrence of serious adverse events that may raise significant implications for the safety of patients enrolled in similar human gene transfer studies. For example, there have been several instances in which public RAC discussion of serious adverse events has resulted in important changes in the design of vectors for gene delivery. When deemed appropriate, NIH/ORDA will initiate additional data collection for a comprehensive and public review by the RAC and ad hoc experts. This process fosters broad public awareness of issues and developments in human gene transfer research. The comprehensive public review of data by the RAC is a critical component of Federal oversight of gene transfer research.

Recently some investigators and sponsors have begun to designate human gene transfer protocols or serious adverse event reports confidential, thereby precluding public RAC review. Out of concern about this development, the NIH requested that the RAC consider whether the requirement for serious adverse event reporting as set forth in the NIH Guidelines needed to be clarified.

During the September 2–3, 1999, meeting, the RAC developed the following consensus statement with regard to serious adverse event reporting to NIH/ORDA and the RAC: ''Adverse event reports shall not be designated as confidential, either in whole or in part. Adverse event reports are essential to decision-making by IBCs, IRBs, and potential subjects of gene transfer research in humans. The public disclosure of adverse events [in human gene transfer research] is also essential to public understanding and evaluation of gene transfer in humans. Adverse event reports must be made available for public discussion [by the RAC] without the inclusion of proprietary or trade secret information.''

Some investigators have not complied with the NIH Guidelines requirement to report serious adverse events immediately to the NIH/ORDA. While the NIH Guidelines are clear on this matter, the NIH is proposing to amend the NIH Guidelines to restate the requirements for serious adverse event reporting and to include: (1) A definition of serious adverse events and a stipulation of the time-frame in which they are to be reported in writing (adapted from 21 CFR 312.32 IND Safety Reports); (2) a mandate that serious adverse event reports must not contain any trade secret or commercial or financial information that is privileged or confidential and that all information submitted in accordance with Appendix M–VII–C will be considered public unless NIH ORDA determines that there are exceptional circumstances; and (3) a directive that serious adverse event reports submitted to ORDA be stripped of individually-identifiable patient information.

Proposed Amendments to the NIH Guidelines

A new Section I–E–7 is added to read:

''Section I–E–7. A ''serious adverse event'' is defined as any expected or unexpected adverse event, related or unrelated to the intervention, occurring at any dose that results in any of the following outcomes; death, a life-threatening event, in-patient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization also may be considered a serious adverse event when, based upon appropriate medical judgement, they may jeopardize the human gene transfer research subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.''

Appendix M, Points To Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into One or More Human Subjects (Points To Consider)

Appendix M–VII–C, Serious Adverse Events, is proposed to read:

"Appendix M–VII–C–1, Serious Adverse Event Reporting

''Principal Investigators who have received authorization from FDA to initiate a human gene transfer protocol must report immediately in writing any serious adverse event (as defined in Section I–E–7) to the local Institutional Review Board, Institutional Biosafety Committee, Office for Protection from Research Risks (if applicable), NIH/ORDA, and FDA.

''Serious adverse event reports must not contain any trade secret or commercial or financial information that is privileged or confidential as defined under the Freedom of Information Act, 5 U.S.C. 552; therefore, unless NIH/ORDA determines that there are exceptional circumstances, all information submitted in accordance with Appendix M–VII–C will be considered public.

''Reports of serious adverse events may be submitted by e-mail to: ci4e@nih.gov, fax to: 301–496–9839, or by mail to: the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010.

Appendix M–VII–C–2, Serious Adverse Event Reporting: Content and Format

''Reports of serious adverse events must follow the format provided in the Adverse Event Reporting Form available on NIH/ORDA's web site at: http://www.nih.gov/od/orda/. The serious adverse event report must include, but need not be limited to: (1) The date of the event; (2) a complete description of the event; (3) relevant clinical observations; (4) relevant clinical history; (5) relevant tests that were or are planned to be conducted; (6) the suspected cause of the event; (7) gene delivery method; (8) vector type, *e.g.*, adenovirus; (9) vector subtype, *e.g.*, type 5, relevant deletions; (10) dosing schedule; (11) route of administration; (12) clinical site; (13) principal investigator(s); (14) NIH Protocol number; and (15) Investigational New Drug (IND) number.

''Serious adverse event reports should be stripped of individually-identifiable patient information. Examples of such information include, but are not limited to, the patient's name, address, contact information, social security number, date of birth.

"Appendix M–VII–C–3, Time-Frames for Serious Adverse Event Reporting: Initial and Follow-Up Reports

''Immediate reporting of serious adverse events is essential for the early identification of acute events related to a gene transfer procedure, as well as the identification of patterns that may signal potential safety concerns. For the purposes of the NIH Guidelines, 'immediate' written reporting of all serious adverse events is to occur as soon as possible but no later than 15 calendar days after such an event has occurred. This applies to all serious adverse events, related or unrelated to gene transfer, which occur during the course of the clinical trial.

''Relevant additional clinical and laboratory data may become available following the initial serious adverse event report. The Principal Investigator(s) must provide any relevant follow-up information to a serious adverse event report within 15 calendar days of receipt of the relevant information. In addition, if a serious adverse event occurs after the end of a clinical trial, and is determined to be related to gene transfer, that event shall be reported by the Principal Investigator within 15 calendar days of the determination.''

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 16, 1999.

Lana Skirboll,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 99–30342 Filed 11–19–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–99–1990–00; CACA–20139 and CACA–22901]

Notice of Availability of Supplemental Environmental Impact Statement and Preferred Action for the Proposed Sand and Gravel Mining Operation, Los Angeles County, CA

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs-South Coast Field Office, Desert District, California.

ACTION: Notice of availability of supplemental environmental impact statement and identification of preferred action.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.1(a), notice is hereby given that the Bureau of Land Management (BLM) has prepared a supplement to the Draft Environmental Impact Statement (EIS). This supplement to the Draft EIS addresses a new proposal by Transit Mixed Concrete Company to transport mine material by a conveyor belt system rather than open trucks as proposed in the original draft EIS. The supplement will provide; further analysis of the potential air quality impacts. In addition the supplement identifies the BLM's preferred action. Interested citizens are invited to review the Supplement and submit comments. Copies of the Supplement may be obtained by telephoning or writing to the contact person listed below. Public reading copies of the Supplement are available at the following County of Los Angeles public libraries: Canyon County Library, 18536 Soledad Canyon Road, Santa Clarita, CA 91351; Newhall Library, 22704 W. Ninth Street, Santa Clarita, CA 91321; Valencia Library, 23743 W. Valencia Boulevard, Santa Clarita, CA 91355.

DATES: Comments must be received in writing to the BLM no later than January 10, 2000.

ADDRESSES: Written comments shall be mailed to the following address: Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, PO Box 1260, North Palm Springs, California, 92258. Comments may also be submitted by electronic mail (E-mail) to the following address: emisquez@ca.blm.gov. The response to comments will be provided in the Final EIS.

FOR FURTHER INFORMATION CONTACT: Ms. Elena Misquez, BLM, Palm Springs-South Coast Field Office, PO Box 1260, North Palm Springs, CA 92258, telephone 760–251–4804.

Dated: November 12, 1999.

Carole Levitzky,

Assistant District Manager, External Affairs.

[FR Doc. 99–30094 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1220–00 PD; HAG99–0309]

Proposed Prohibited Acts on Public Land in Oregon

AGENCY: Bureau of Land Management, Vale District, Baker Field Office, Oregon/Washington.

ACTION: Proposed supplementary rules for public land within the Wallowa and Grande Ronde River corridors, Baker Resource Area, Vale District, Oregon and Washington.

SUMMARY: The Bureau of Land Management's (BLM) Baker Field Office is proposing supplementary rules. These supplementary rules will apply in parts of the canyons of the Wallowa River and the Grande Ronde River in Oregon and Washington. The supplementary rules will govern conduct on all public lands managed by BLM within the river corridors described in the notice. The supplementary rules are needed in order to protect the rivers' natural resources and the public health and safety.

DATES: You should submit your comments by December 22, 1999.

ADDRESSES: You may mail or hand-deliver comments on the proposed supplementary rule to Bureau of Land Management, Baker Field Office. 3165 10th St., Baker City, OR 97814. You may also comment via the Internet to: vale__mail@blm.gov.

FOR FURTHER INFORMATION CONTACT: Penelope Dunn-Woods, Baker Field Office Manager, 3165 10th St., Baker City, OR 97814, telephone (541) 523–1256.

PUBLIC COMMENT PROCEDURES: Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed supplementary rule should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final supplementary rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the Baker Resource Area address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

DISCUSSION OF THE RULES: These supplementary rules will apply to portions of both the Wallowa and Grande Ronde river corridors managed by the Bureau of Land Management. In the canyon of the Wallowa River this includes public lands within ¼ mile of the mean high water mark of that portion of the river from mile 10 to the river's confluence with the Grande Ronde River. In the canyon of the Grande Ronde River includes public lands ¼ mile above the mean high water mark in the Washington State portion, and the public land in Oregon from approximately river mile 86.5 to the Oregon-Washington State line. BLM has determined these supplementary rules are necessary to protect the rivers' nature resources and to provide for safe public recreation, public health, and data collection. Our objective is to provide a quality recreational experience to the general public, with minimal amounts of user conflicts, and minimum damage to the public lands and resources.

In addition, these supplementary rules are in accordance with the Wallowa & Grande Ronde Rivers Final Management Plan and Environmental Assessment, December 1993, and conform to U.S. Forest Service regulations for management of adjacent segments of both rivers. You may read legal descriptions of the areas to which this order applies at the Baker Field Office, or find them in the Wallowa/Grande Final Management Plan, and in the 1995 & 1999 Vale District Project & Planning Update for the Baker Field Office.

Supplementary Rules for Wallowa and Grande Ronde River Canyons

Under 43 CFR 8365.1–6 and 43 CFR 8351.2–1, the Bureau of Land Management will enforce the following supplementary rules on portions of both the Wallowa and Grand Ronde river corridors managed by BLM. In the canyon of the Wallowa River this includes public lands within ¼ mile of the mean high water mark of that portion of the river from mile 10 to the river's confluence with the Grande Ronde River. In the canyon of the Grande Ronde River this includes public lands within ¼ mile above the mean high water mark in the Washington state portion, and the public land in Oregon from approximately river mile 86.5 to the Oregon-Washington state line. In all of these areas you must follow these supplementary rules:

1. Fires

(A) You must not build, maintain, or use a fire or campfire unless it is fully contained in a fireproof container with sides of a height sufficient to contain all ash and debris.

(B) You must not leave any campfire debris in the river corridor. This includes all ash, wood, or charcoal residue, or partially consumed briquets. All campfire ash and debris must be packed out of the river corridors.

2. Firewood and Vegetation

(A) You must not cut any live tree or vegetation,

(B) You must not cut or use other than dead and down material.

3. Sanitation

(A) You must carry and use a portable, containerized toilet during float trips.

(B) You must not dispose of solid human body waste except at designated locations or fixtures provided for that purpose.

4. Firearms

(A) You must not discharge a firearm within 150 yards of any occupied site, across any road or river, or in violation of State law.

5. Boating

(A) You must not operate motorized watercraft anywhere on the Grande Ronde River from the Umatilla National Forest Boundary marker (1.5 miles below the confluence with the Wallowa River at approximately river mile 80) downstream to the Oregon/Washington State line (approximately river mile 38.5).

(B) You must not violate any State Marine Board regulation.

6. Camping

(A) You must not camp in any area posted as ''Closed'' to that use.

7. Vehicles

(A) You must not enter the river corridor by motor vehicle in any area closed to that use.

(B) You must not operate a vehicle on other than established roads and trails.

8. Motorized Equipment

(A) You must not possess or use any motorized equipment or machinery activated by a non-living power source within the designated wild section of the Grande Ronde River from the USFS boundary near Grossman Creek (approximately river mile 62) downstream to Wildcat Creek (approximately river mile 53).

(B) You may use small, battery-powered, hand carried devices.

9. Other Acts

(A) No party or group larger than 25 people may launch, be on the river, stop, or camp within the boundary stated in these supplementary rules.

(B) You must obtain a permit for any boat trip prior to launching.

(C) You must follow the requirements of your permit and its permit stipulations.

(D) You must follow the regulations posted at launch sites.

10. Exemptions

Persons who are exempt from these supplementary rules include any Federal, State, or local officer, and members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

Penalties

(A) Under 18 U.S.C. 3571 and 43 CFR 8351.2–1, any person who violates any of these supplementary rules within the wild and Scenic portions of the river corridors may be tried before a United States Magistrate and fined no more than $500 or imprisoned for no more than 6 months, or both. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571.

(B) On public lands outside of the designated Wild and Scenic river corridors, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8365.1–6 any person who violates any of these supplementary rules within the boundaries established in the supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Charles Wassinger,

Associate State Director.

[FR Doc. 99–29356 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Issues Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable Issues Subcommittee will meet on December 8, 1999 to discuss revisions to next years proposal solicitation package. Focus will be on local involvement, public access, and minimum requirements for applicants. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Wednesday, December 8, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1118, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay-Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This efforts, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advise to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 16, 1999.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 99–30343 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Delta Drinking Water Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Delta Drinking Water Council will meet on December 16,

1999, to discuss several issues including drinking water quality targets and interim milestones. This meeting is open to the public. Interested persons may make oral statements to the Delta Drinking Water Council or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Delta Drinking Water Council meeting will be held from 12 noon to 3:30 p.m. on Thursday, December 16, 1999.

ADDRESSES: This meeting will meet at the Resources Building, 1416 Ninth Street, Room 1142, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Paul Hutton CALFED Bay-Delta Program, at (916) 653–9715. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One are of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Delta Drinking Water Council to advise the CALFED Program and the CALFED Policy Group through BDAC on necessary adaptations to the Program's Drinking Water Quality Improvement Strategy to achieve CALFED's drinking water objectives.

Minutes of the meeting will be maintained by the Program, 1416 Ninth Street, Suite 1155, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: November 16, 1999.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 99–30344 Filed 11–19–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of information collection under review.

Bulletproof Vest Partnership Grant Act of 1998 (Act)—Public Law 105–181 June 16, 1998 Funding Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 19, 1999 (64 FR 19200), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 22, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the three form/collections:* Registration, Application for Funding, and Request for Payment.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal, and any law enforcement agencies who may elect to assist their units of general government with completion of the Application for Funding or Request for Payment forms.

Other: Armor vest manufacturers or distributors, individual law enforcement officers, or other interested parties.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that between 25,000 and 30,000 eligible units of general government may complete the Registration and Application for Funding forms that may take one hour during any one Fiscal Year, and may complete any number of Requests for Payment forms that may take as much as one hour total per Fiscal Year to complete as armor vests are received/accepted and Requests for Payment are made to the BVP.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated to be between 50,000 and 90,000 total hours for the 25,000 to 30,000 estimated applicants.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: November 12, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–30073 Filed 11–19–99; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

2. *Current OMB approval number:* 3150–0109.

3. *How often the collection is required:* Monthly.

4. *Who is required or asked to report:* NRC Contractors.

5. *The number of annual respondents:* 80.

6. *The number of hours needed annually to complete the requirement or request:* 1,851 hours (1,123 for Billing + 728 for License Fee Recovery Cost Summary).

7. *Abstract:* The Division of Contracts and Property Management in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting cost data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs in accordance with the contract terms and conditions.

Submit, by January 21, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft 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 about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of November 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–30355 Filed 11–19–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15c1–7, SEC File No. 270–146, OMB Control No. 3235–0134

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c1–7 provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place. The Commission estimates that 500 respondents collect information annually under Rule 15c1–7 and that approximately 33,333 hours would be required annually for these collections.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: November 15, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30316 Filed 11–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–1414]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pacific Bell, Ten Year 7¼% Notes, Due July 1, 2002; Twelve 6¼% Notes, Due March 1, 2005; Thirty-Three Year 7⅛% Debentures, Due March 15, 2026; Forty Year 7½% Debentures, Due February 1, 2033; Thirty Year 6⅞% Debentures, Due August 15, 2003; and Forty-One Year 6⅝% Debentures, Due October 15, 2034)

November 16, 1999.

Pacific Bell, a California corporation (''Company'') an indirect, wholly-owned subsidiary of SBC Communications Inc. (''SBC''), 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 New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

On September 27, 1999, the Company's Board of Directors, in compliance with NYSE Rule 500, adopted a resolution to withdraw the Securities from listing and registration on the Exchange. The Company, in making the determination to seek such withdrawal, has cited the following factors in its application to the Commission:

- Each of the Securities currently has a limited number of registered holders.
- The Securities trade infrequently on the Exchange and the Company does not anticipate that such trading volume might increase appreciably.
- The costs associated with the continued listing of the Securities are prohibitive, given the limited trading volume.
- Both the Company and SBC are currently reporting companies under the Act and each files annual and periodic reports with the Commission, but the Company is seeking to avoid the costs it incurs in preparing such annual and periodic reports by obtaining from the Commission an exemption from the Act's reporting requirements. SBC has therefore proposed to guarantee certain of the Company's debt securities owned by more than 300 registered holders. Based on this proposed guaranty, and in conjunction with its application to withdraw its Securities from listing and registration on the NYSE, the Company has sought exemption from the Act's reporting requirements as provided in certain circumstances by Section 12(h) of the Act.
- The Company is not obligated by the terms of the indenture under which the Securities were issued or by any other document to maintain the Securities' listings on the NYSE or any other exchange.

The Company has stated in its application to the Commission that it has complied with the requirements of NYSE Rule 500 and that the Exchange has indicated it will not interpose any objection to the withdrawal of the Securities.

Any interested person may, on or before December 7, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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. 99–30317 Filed 11–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–2346]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Southwestern Bell Telephone Company, Seven Year 6⅛% Notes, Due March 1, 2000; Eight Year 6⅜% Notes, Due April 1, 2001; Twelve Year 6⅝% Notes, Due April 1, 2005; Forty Year 6⅞% Debentures, Due February 1, 2011; Twenty-Two Year 7% Debentures, Due July 1, 2015; Thirty Year 7⅝% Debentures, Due March 1, 2023; Thirty-Two Year 7¼% Debentures, Due July 15, 2025; and Fifty Year 6⅞% Debentures, Due March 31, 2048)

November 16, 1999.

Southwestern Bell Telephone Company, a Missouri corporation (''Company'') and indirect, wholly-owned subsidiary of SBC Communications Inc. (''SBC''), 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 New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

On September 27, 1999, the Company's Board of Directors, in compliance with NYSE Rule 500, adopted a resolution to withdraw the Securities from listing and registration on the Exchange. The Company, in making the determination to seek such withdrawal, has cited the following factors in its application to the Commission:

- Each of the Securities currently has a limited number of registered holders.
- The Securities trade infrequently on the Exchange and the company does not anticipate that such trading volume might increase appreciably.
- The costs associated with the continued listing of the Securities are prohibitive, given the limited trading volume.
- Both the Company and SBC are currently reporting companies under the Act and each files annual and periodic reports with the Commission, but the Company is seeking to avoid the costs it incurs in preparing such annual and periodic reports by obtaining from the Commission an exemption from the Act's reporting requirements. SBC has therefore proposed to guarantee certain of the Company's debt securities owned by more than 300 registered holders.

Based on this proposed guaranty, and in conjunction with its application to withdraw its Securities from listing and registration on the NYSE, the Company has sought exemption from the Act's reporting requirements as provided in certain circumstances by Section 12(h) of the Act.

- The Company is not obligated by the terms of the indenture under which the Securities were issued or by any other document to maintain the Securities' listing on the NYSE or any other exchange.

The Company has stated in its application to the Commission that it has complied with the requirements of NYSE Rule 500 and that the Exchange has indicated it will not interpose any objection to the withdrawal of the Securities.

Any interested person may, on or before December 7, 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. 99–30318 Filed 11–19–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42129; File No. SR–Amex–99–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Margin and Net Capital Requirements for Members and Clearing Members Participating in Joint Back Office Arrangements

November 10, 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 July 16, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 462, ''Minimum Margins,'' to establish margin and net capital requirements for Amex members and clearing members participating in joint back office (''JBO'') arrangements. The test of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Exchange Rule 462 to establish margin and net capital requirements for JBO participants[3] and clearing members. JBO arrangements permit a participating broker-dealer to be deemed self-clearing[4] for margin purposes and entitle the participating broker-dealer to receive credit on a good faith margin basis.[5]

In a 1996 release discussing amendments to Regulation T,[6] the Board of Governors of the Federal Reserve System (''FRB'') placed its reliance on the authority of self-regulatory organizations (''SROs'') to ensure the reasonableness of JBO arrangements.[7] When the Regulation T provision that permits JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit a JBO clearing member extended to a JBO participant and the participant's ownership interest in the clearing member. Consequently, the FRB did not establish any explicit requirement for the amount of ownership that each JBO participant should have in the JBO clearing member. However, because Regulation T does not provide a precise ownership standard,[8] good faith credit has been extended to some ''owners'' that hold merely a nominal interest in a JBO clearing member.

In conjunction with other SROs and representatives from the securities industry, the Exchange seeks to establish prudent ownership standards for JBO participants and clearing members. These standards would permit the extension of good faith credit to clearing member ''owners'' only when the owners maintain meaningful assets on deposit with the JBO clearing member, and the clearing member maintains sufficient net capital and risk control procedures to carry the JBO accounts.

a. *Requirements for JBO Participants.* Under the proposal, each JBO participant would be required to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 (''Rule 15c3–1'').[9] JBO participants could not claim the net capital exemption available to option market makers under Commission Rule 15c3–1(b)(1).[10] Instead, JBO participants would be required to deposit and maintain minimum account equity of $1 million and would be subject to Financial and Operational Combined Uniform Single Report (''FOCUS'') filings and certified audits. If the equity in a JBO participant's account fell below $1 million, the JBO clearing firm would be

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The proposed rule change would apply to Amex members and member organizations that participate in JBO arrangements with JBO clearing members (''JBO participants'').

[4] Under the proposal, JBO participants would not be considered self-clearing for any purpose other than for the extension of credit under Exchange Rule 462, as revised, or under the comparable rules of another self-regulatory organization.

[5] ''Good faith'' with respect to margin means, ''the amount of margin which a creditor would require in exercising sound credit judgment.'' *See* 12 CFR 220.2.

[6] Regulation T is entitled ''Credit by Brokers and Dealers.'' The FRB issued Regulation T pursuant to Section 7(a) of the Act. *See* 12 CFR 220, *et seq.*

[7] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 26, 1996), 61 FR 20386 (May 6, 1996).

[8] Section 220.7(c) of Regulation T only requires that a JBO clearing firm be ''a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' 12 CFR 220.7(c).

[9] 17 CFR 240.15c3–1.

[10] 17 CFR 240.15c3–1(b)(1).

required to issue a margin call for additional funds or securities to be satisfied within five business days. Additionally, each JBO participant would be required to satisfy the ownership standards established by the JBO clearing member. To ensure that adequate procedures existed for complying with these requirements, JBO participants would be required to employ or have access to qualified Series 27 principal.[11]

b. *Requirements for JBO Clearing Members.* The proposed rule change would require each member clearing JBO accounts to notify its Designated Examining Authority in writing of its intention to clear JBO accounts and to comply with additional net capital requirements prescribed by the Exchange. Specifically, a JBO clearing member must maintain either: (1) tentative net capital of $25 million;[12] or (2) net capital of $7 million, if the clearing member's primary business is clearing option market maker accounts.[13] A JBO clearing member that primarily conducts an options market maker clearing business would be required to include the gross deductions calculated for all JBO participant accounts in its ratio of gross options market maker deductions to adjusted net capital.

Under the proposal, a JBO clearing member would be required to adjust its net worth each day by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to Rule 15c3–1 for the positions maintained in the JBO account. Additionally, clearing members that maintained JBO accounts would be required to ensure that each JBO participant maintained equity of $1 million over all related funds. The JBO clearing member would be required to issue a margin call if the JBO participant's account equity fell below the $1 million threshold. Each JBO clearing member also would be required to establish and maintain written ownership standards for its JBO accounts.[14] Finally, JBO clearing members would be required to develop acceptable risk analysis standards and comply with the requirements of Amex Rule 462.

c. *Margin Requirements for Broker-Dealer Accounts.* Currently, any deficiency between the equity maintained in a proprietary account carried for a broker-dealer and the maintenance margin required by Exchange Rule 462(b)(1)(*i.e.*, 25% of the current market value of securities held ''long'' in the account) is deducted in computing the net capital of the clearing member organization. To treat introducing broker-dealers and JBO participants similarly, the proposed rule change predicates the deduction to a clearing member organization's net capital upon the haircut requirements of Rule 15c3–1 (*i.e.*, 15% of the current market value for long positions)[15] rather than the 25% maintenance margin requirement under Exchange Rule 462(b)(1).

d. *Margin Requirements for Specialist and Market Maker Accounts.* The proposal would likewise change the manner in which deductions to a clearing member organization's net capital are computed for specialist and market maker accounts. Presently, the amount of any deficiency between the equity in the account carried for a specialist or market maker and the 25% maintenance margin required by Exchange Rule 462(b)(1) is deducted in computing the net capital of the clearing member organization. Under the proposed rule change, the deduction would be based upon the haircut requirements of Rule 15c3–1 (*i.e.*, 15%) rather than the margin requirements under Exchange Rule 462(b)(1)(*i.e.*, 25%).

The same modification would be made to the margin provision governing joint accounts carried by member organizations in which the member organizations also participate. If the equity maintained in the joint account by other participants is deficient, the proposal would require the clearing member organization to compute the deduction to its net capital based upon the haircut requirements of Rule 15c3–1 rather than the margin requirements of Exchange Rule 462(b)(1).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[16] in general, and further the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[11] The Commission notes that certain broker-dealers subject to Rule 15c3–1(a)(2) (*i.e.*, broker-dealers that carry customer accounts and broker-dealers that introduce customer accounts and receive securities) are eligible for an exemption from NASD Rule 1022(b), which requires such broker-dealers to employ a Series 27 principal. The Exchange's proposal recognizes this class of broker-dealers by providing that broker-dealers participating in JBO arrangements must either employ ''or have access to'' a qualified Series 27 principal. According to the Exchange, the phrase ''or have access to'' means that a JBO participant may employ a Series 27 principal on a part-time basis or as a consultant. Telephone conversation between Scott Van Hatten, Legal Counsel, Exchange, and Michael Loftus, Special Counsel, Division of Market Regulation, Commission (November 10, 1999).

[12] The term ''tentative net capital'' generally refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

[13] A clearing member would be deemed to be primarily conducting an options market maker clearing business if at least 60% of the gross haircuts calculated for all options market maker and JBO participant accounts, in aggregate, could be attributed to options market maker transactions.

[14] The Exchange would not require JBO clearing members to establish ownership standards that meet any minimum guidelines in addition to the rules of the Exchange. As a result, clearing members would possess the discretion to develop the ownership criteria governing their JBO accounts. However, should the Exchange learn of any inappropriate ownership standards through its audit and surveillance activities, the Exchange would move to correct the impropriety.

[15] 17 CFR 240.15c3–1.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

change 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 submissions, 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 persons, 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, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–26 and should be submitted by December 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30319 Filed 11–19–99; 8:45 am]

BILLING CODE 8010–01–M

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42128; File No. SR–Amex–99–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating To an Increase in the Maximum Size of Options Orders Eligible To Be Entered Through the Amex Order File System Into the Amex Options Display Book

November 10, 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 October 8, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase from 100 to 250 the maximum number of equity and index option contracts in an order that may be entered through the Amex Order File System (''AOF'') into the Amex Options Display Book (''AODB''). The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The AOF routes orders to specialists' order books and to Auto-Ex, an automatic execution system that executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered. Currently, the AOF permits a Member or Member Firm to enter orders for up to 100 option contracts directly into an Exchange specialist's order book (the AODB) from off the Exchange's trading floor.[3]

Amex proposes to increase the maximum size of options orders that may be entered through the AOF into the AODB from 100 to 250 option contracts.[4] This increase in maximum size of orders eligible for automated entry into the AODB will permit Members and Member Firms to send a larger percentage of orders directly to a specialist's order book for execution, resulting in increased automated order handling. Amex believes this increased automated order handling will benefit customers as well as Members and Member Firms by expanding the number of option orders eligible for automated handling and promoting the orderly and timely delivery, processing and execution of such orders.

The Exchange represents that AOF/AODB has been successful in enhancing execution and operational efficiencies. It anticipates that the proposed increase in the AOF.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex represents that the foregoing rule change effects a change in an Amex order-entry system that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting the access to or availability of the system. Therefore, the rule change has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange represents that currently, orders for more than 100 option contracts are communicated by telephone to the floor broker, who seeks to execute that order in the trading crowd. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex and Gordon Fuller, Special Counsel and Gail Fortson, Paralegal Specialist, Division of Market Regulation (''Division''), SEC (October 8, 1999).

[4] Amex represents that its system capacity is sufficient to accommodate the anticipated increased volume of orders entered into AODB as a result of the increase in maximum order size. Telephone conversation between Scott Van Hatten, Amex, And Gordon Fuller, Special Counsel and Gail Fortson, Paralegal Specialist, Division, SEC (October 8, 1999).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[7] and subparagraph (f)(5) of Rule 19b–4 under the Act.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–41 and should be submitted December 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margart H. McFarland,

Deputy Secretary.

[FR Doc. 99–30320 Filed 11–19–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 24.19b–4(f)(5).

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42132; File Nos SR–Amex–98–39; SR–Phlx–98–39]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Philadelphia Stock Exchange; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amex Amendment No. 1 and Phlx Amendment No. 2 Thereto Relating to an Increase in Position and Exercise Limits for Narrow-Based Index Options

November 12, 1999.

I. Introduction

On October 13, 1998, and on September 3, 1998, the American Stock Exchange, Inc. (''Amex'') and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, the ''Exchanges'') respectively submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes to increase position and exercise limits for narrow-based index options.

The proposed rule changes were published for comment in the **Federal Register** on December 14, 1998, and December 17, 1998, respectively.[3] No comments were received on the proposal. Amex and Phlx filed amendments to the proposed rule changes on September 2, 1999, and July 16, 1999, respectively.[4] This order approves the proposals, as amended.

II. Description

The Exchanges propose to increase position and exercise limits for narrow-based index options traded on each Exchange.[5] Specifically, the Exchanges' rules provide three different position limits depending on index components' relative weightings in the index.[6] The current limits for narrow-based index options are 9,000, 12,000 and 15,000 contracts on the same side of the market. Under the proposed changes, the new limits will be 18,000, 24,000, and 31,500.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Commission believes the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release Nos. 40756 (December 7, 1998), 63 FR 68809 (December 14, 1998); 40757 (December 7, 1998), 63 FR 69704 (December 17, 1998). Phlx Amendment No. 1 was published for comment in the Notice. *See* Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Nandita Yagnik, Attorney, Phlx, dated September 25, 1998.

[4] *See* Letter from Scott G. VanHatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated September 2, 1999 (''Amex Amendment No. 1''); and Letter from Nadita Yagnik, Phlx, to Michael Walinskas, Associate Director, Division of Market Regulation, Commission, dated July 156 1999 (''Phlx Amendment No. 2''). These amendments propose to set the position and exercise limits at 18,000, 24,000, and 31,500 contracts, rather than the originally proposed tripled limits.

[5] Amex trades options on the following narrow-based indices: Airline, Biotechnology, Computer Hardware, Computer Technology, de Jager Year 2000, Disk Drive, Inter@ctive Week Internet, Morgan Stanley Commodity Related, Morgan Stanley High-Technology 35, Natural Gas, Networking, North American Telecommunications, Oil, Pharmaceutical, Securities Broker/Dealer, CSFB Technology Index, Deutsche Bank Energy Index, TheStreet.com E-Commerce Index, and TheStreet.com E-Finance Index.

Phlx trades options on the following narrow-based indices: Gold/Silver Index (''XAU''); Utility Index (''UTY''); Phlx/KBW Bank Index (''BKX''); Semiconductor Index (''SOX''); Forest and Paper (''FPP''); Box Maker Index (''BMX''); OTC Prime Index (''OTX''); Oil Service Index (''OSC''); and TheStreet.com Internet Index (''DOT'').

[6] *See* Amex Rule 904C. Amex Rule 905C establishes exercise limits for the corresponding options at the same levels. *See* Phlx Rule 1001A. Phlx Rule 1002A establishes exercise limits for the corresponding option at the same levels.

[7] *See* 15 U.S.C. 78f(b). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

In general, the Commission has taken a gradual, evolutionary approach toward the expansion of position and exercise limits.[9] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[10]

In this regard, the Exchanges have represented that the current position and exercise limits impede their members; ability to execute investment strategies. Given the Commission's traditional, gradual approach to position and exercise limits, and that three years have passed since these limits have been raised, the Commission believes that it is reasonable to allow for an increase in the limits for narrow-based index options to accommodate the needs of market participants.

The Commission believes that an increase in position and exercise limits for narrow-based index options is appropriate for several reasons. First, the Commission believes that increasing position and exercise limits for narrow-based index options may bring additional depth and liquidity, in terms of both volume and open interest, to these index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the index options or the underlying component securities.

Second, increasing position and exercise limits for narrow-based index options should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy.

Third, the Commission notes that the proposals, while increasing the position limits for narrow-based index options, continue to reflect the unique characteristic of each index option and to maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 18,000 contract will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchanges' semi-annual review of industry index option position limits. A position limit of 24,000 contracts will apply if any single underlying stock accounts, on average for 20% or more of the index value or any fire underlying stocks account, on average for more than 50% of the index value, but no single value in the group account, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 31,500 contract limit will apply only if the Exchanges respectively determine that the conditions requiring either the 18,000 contract limit or the 24,000 contract limit have not occurred.[11]

Fourth, the Commission believes that financial requirements imposed by the Exchanges and by the Commission adequately address concerns that an Amex or Phlx member or their customer may try to maintain a large unhedged position in a narrow-based index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[12] The Exchanges also have the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted.[13] Monitoring accounts maintaining large positions should provide the Exchanges with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and the Exchanges' margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[14] The Commission also notes that The Options Clearing Corporation(''OCC'') will serve as the counter-party guarantor in every exchange-traded transaction.

Fifth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that increasing position and exercise limits for narrow-based index options will better allow the Exchanges to compete with the OTC market.

Sixth, the Commission notes that it recently approved rule filings increasing position and exercise limits for standardized equity options.[15] The Commission also approved rule filings eliminating position and exercise limits for certain broad-based index options.[16] Given these recent changes to the various exchanges' position limit rules, the Commission believes it is reasonable to allow for corresponding changes to the position and exercise limits for narrow-based index options.[17]

[8] Exchange Act Release Nos. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and Exercise limits); 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–92–13) (order approving an increase in Institutional Index Options position and exercise limits).

[9] The Commission approved increases in position limits in 1983, 1993, 1995, and 1996. *See, e.g.*, Exchange Act Release No. 37863 (October 24, 1996), 61 FR 56599 (November 1, 1996) (SR–Phlx–96–33).

[10] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978).

[11] *See* Amex Rule 904C(c); Phlx Rule 1001A(b).

[12] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broke-dealer's aggregate index position over a + (-) 10% market move. Exchange margin rules require margin on naked index options, which are in, or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates of a $90,000 to $135,000 requirement per each unhedged contract.

[13] *See* Amex Rule 462(d)(2)(K); and Phlx Rule 722(i)(8).

[14] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (adopting Risk Based Haircuts); Phlx Rule 722; and Amex Rule 462.

[15] *See* Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (File Nos. SR–CBOE–98–25; Amex-98–22; PCX–98–33; and Phlx–98–36) (increasing position limits for standardized equity options to 13,500, 22,500, 31,500, 60,000, and 75,000).

[16] *See* Exchange Act Release Nos. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (File No. SR–CBOE–28–23); 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (File No. SR–Amex–98–38).

[17] The Commission notes that the trend toward increasing position and exercise limits for standardized equity options and eliminating them for certain broad-based index options, while a factor in considering increases for narrow-based index options, does not automatically dictate the need for or appropriateness of an increase in position and exercise limits for narrow-based index options. The

Finally, the absence of any discernable manipulative problems for narrow-based index options at existing levels leads the Commission to conclude that the proposed increases are reasonable and that they can be safely implemented. The Commission believes that the Exchanges' surveillance programs are adequate to detect and deter violations of position and exercise limits, as well as to detect and deter attempted manipulation and other trading abuses through the use of such illegal positions by market participants.[18]

The Commission finds good cause to approve Amex Amendment No. 1 and Phlx Amendment No. 2 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** These amendments set the new position and exercise limits at 18,000, 24,000, and 31,500 contracts. In light of the Commission's traditional, gradual approach to position limits, the Commission believes that these limits are more appropriate than those initially proposed. The Commission also notes that the limits being approved reflect percent increases that more closely correspond to previous increases. Finally, the Commission notes that the higher limits were noticed for comment and no comments were received. Given that no regulatory issues were raised with the higher limits, the Commission believes approving the lower limits on an accelerated basis is appropriate under the Act. Accordingly, the Commission finds that, consistent with Sections 6(b) and 19(b)(2) of the Act, there is good cause to approve Amex Amendment No. 1 and Phlx Amendment No. 2 to the proposed rule changes on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amex Amendment No. 1 and Phlx Amendment No. 2, including whether the amendments are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Amex–98–39 or SR–Phlx–98–39 and should be submitted by December 13, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule changes (SR–Amex–98–39; SR–Phlx–98–39) are approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30321 Filed 11–19–99; 8:45 am]

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fact that many narrow-based index options include non-options eligible components requires that the Exchanges and the Commission give additional consideration to manipulation and other regulatory concerns prior to any increase. The Commission has considered these issues and believes that the proposed increases are appropriate at this time.

[18] The Commission emphasizes that the Exchanges must closely monitor compliance with position and exercise limits and impose appropriate sanctions for failures to comply with the Exchanges' position and exercise limit rules.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 22, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Applications for Business Loans.

Form No's: 4, 4–SCHA, 4I, 4L and 4Short.

Frequency: On Occasion.

Description of Respondents: Applicants applying for a SBA Business Loan.

Annual Responses: 60,000.

Annual Burden: 1,187,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–30347 Filed 11–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000356]

EDF Ventures, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that EDV Ventures, L.P. (''EDF''), 425 North Main Street, Ann Arbor, MI 48104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the completed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. EDF Ventures, LP plans to provide equity financing to InterLase Corporation, 2217 Vinewood Boulevard, Ann Arbor, MI 48104. The financing will be used for research, development, and working capital purposes.

The financing is brought within the purview of 107.730(a)(1) of the Regulations because EDF II, L.P., an associate of EDF Ventures, L.P., owns greater than 10 percent of InterLase Corporation, and therefore InterLase

Corporation is considered an Associate of EDF Ventures, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this notice shall be published, in accordance with Section 107.730(g), in the **Federal Register** by SBA.

Dated: November 12, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–30425 Filed 11–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3215]

State of New Jersey; Amendment #3

In accordance with correspondence received from the Federal Emergency Management Agency dated November 9, 1999, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to December 17, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 12, 1999.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–30424 Filed 11–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Windup Order of the United States District Court for the Middle District of Florida, dated June 29, 1999, the United States Small Business Administration hereby revokes the license of Florida Capital Ventures, Ltd., a Florida corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–0253 issued to Florida Capital Ventures, Ltd. on March 5, 1990 and said license is hereby declared null and void as of September 30, 1999.

Dated: October 15, 1999.

Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–30427 Filed 11–19–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Walnut Capital Corporation License No. 05/02–0430; Notice of Surrender of License

Notice is hereby given that Walnut Capital Corporation, Two North LaSalle Street, Chicago, Illinois 60602, has surrendered their license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Walnut Capital Corporation was licensed by Small Business Administration on November 7, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 12, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–30426 Filed 11–19–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3161]

Culturally Significant Objects Imported for Exhibition

Determinations: ''At the End of the Century: One Hundred Years of Architecture''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, ''At the End of the Century: One Hundred Years of Architecture,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Museum of Contemporary Art in Chicago, Illinois, from on or about December 19, 1999, to on or about March 12, 2000, and at The Museum of Contemporary Art in Los Angeles, California, from on or about April 16, 2000, to on or about September 24, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: November 16, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, United States Department of State.

[FR Doc. 99–30388 Filed 11–19–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 236–1]

Delegation of Functions to the Assistant Secretary for Educational and Cultural Affairs

By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), and to the extent permitted by law, delegation of authority No. 236 is hereby amended to read as follows:

1. By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), and to the extent permitted by law, I hereby delegate to

the Assistant Secretary for Educational and Cultural Affairs:

a. The functions in Public Law 89–259 (79 Stat. 985) (22 U.S.C. 2459) (providing for immunity from judicial seizure for cultural objects imported into the U.S. for temporary exhibits).

b. The functions in sections 101(1)(15)(J) and 212(j) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(15)(J) and 1182(J)), and section 641 of Public Law 104–208 (8 U.S.C. 1372(h)(2)(A)) (relating to designation of exchange visitor programs and related functions).

2. Until such time as the Assistant Secretary for Educational and Cultural Affairs has been confirmed by the Senate and sworn into office, the functions delegated by this order shall be exercised by the Executive Director of the Bureau of Educational and Cultural Affairs, in consultation with the Executive Assistant to the Under Secretary of State for Public Diplomacy and Public Affairs and the Office of the Legal Adviser.

3. Notwithstanding any other provision of this order, the Under Secretary of State for Public Diplomacy and Public Affairs may at any time exercise any function or authority delegated or reserved by this delegation of authority.

4. Functions delegated by this delegation of authority may be redelegated, to the extent consistent with law.

5. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

6. This delegation shall be published in the **Federal Register**.

Dated: November 9, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 99–30389 Filed 11–19–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending November 12, 1999. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, ConformingApplications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6499.

Date Filed: November 12, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 10, 1999.

Description: Application of Spernak Airways, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q, applies for a certificate of public convenience and necessity to authorize it to engage in interstate scheduled air transportation of persons, property and mail between any point in any State in the United States or the District of Columbia, or any Territory or Possession of the United States, and any other point in any State of the United States or the District of Columbia, or any Territory or Possession of the United States.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–30413 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending November 12, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6470.

Date Filed: November 9, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC23 AFR–TC3 0088 dated 12 November 1999, Mail Vote 046—Resolution 010p, TC23/TC123 Africa-TC3 Special Passenger Amending, Resolution from Malaysia, Intended effective date: 15 November 1999.

Docket Number: OST–99–6474.

Date Filed: November 9, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC23 ME–TC3 0076 dated 8 October 1999, Expedited Middle East-TC3 Resolution 002L, Intended effective date: 1 December 1999.

Docket Number: OST–99–6477.

Date Filed: November 10, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC23 AFR–TC3 0085, 0087 dated 8, 22 October 1999, South Atlantic-Europe Resolutions r1–r41, Minutes—PTC23 AFR–TC3 0083 dated 8 October 1999, Tables—PTC23 AFR–TC3 Fares 0035 dated, 22 October 1999, Intended effective date: 1 April 2000.

Docket Number: OST–99–6479.

Date Filed: November 10, 1999

Parties: Members of the International Air Transport Association.

Subject: PTC12 CAN–EUR 0054 dated 29 October 1999, Canada-Europe Resolutions r1–r31, Minutes—PTC12 CAN–EUR 0055 dated 29 October 1999, Tables—PTC12 CAN–EUR Fares 0016 dated 2 November 1999, Intended effective date: 3 January 2000.

Docket Number: OST–99–6489

Date Filed: November 12, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0528 dated 12 November 1999, Mail Vote 047—Resolution 010q, TC2/12/23/123 Special Passenger Amending, Resolution to/from Damman, Intended effective date: 28 November 1999.

Docket Number: OST–99–6490

Date Filed: November 12, 1999.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0225 dated 12 November 1999, Mail Vote 048—Resolution 010rr, TC2/12/23 Special Cargo Amending, Resolution to/from Dammam, Intended effective date: 28 November 1999.

Docket Number: OST–99–6491.

Date Filed: November 12, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0363 dated 2 November 1999, TC3 Within South East Asia Expedited Resolutions r1–r5, PTC3 0393 Technical Correction, TC3 Within South East Asia Expedited Resolution, PTC3 0393 dated 9 November 1999 corrects PTC3 0363 dated 2 November 1999, PTC3 0367 dated 2 November 1999, TC3 Between South East Asia and South Asian, Subcontinent Expedited Resolutions r6–r8, PTC3 0370 dated 2 November 1999, TC3 Between South East Asia and South West Pacific, Expedited Resolutions r9–r12, PTC3 0392 dated 9 November 1999, TC3 Between Japan, Korea and South West Pacific, Expedited Resolutions r13–r16, Intended effective date: 1 December 1999, 1 April 2000.

Docket Number: OST–99–6492.

Date Filed: November 12, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0359 dated 2 November 1999, TC3 Areawide Expedited Resolution r1, PTC3 0360 dated 2 November 1999, TC3 Within South East Asia Expedited Resolutions r2–r8, PTC3 0361 dated 2 November 1999, TC3 Within South East Asia Expedited Resolutions r9, PTC3 0362 dated 2 November 1999, TC3 Within South East Asia Expedited Resolution r10, PTC3 0364 dated 2 November 1999, TC3 Within South West Pacific Expedited Resolution r11, PTC3 0365 dated 2 November 1999, TC3 Between South East Asia and South Asian Subcontinent, Expedited Resolutions r12–r19, PTC3 0366 dated 2 November 1999, TC3 Between South East Asia and South Asian Subcontinent, Expedited Resolution r20, PTC 0368 dated 2 November 1999, TC3 Between South Asian Subcontinent and South West Pacific, Expedited Resolution r21, PTC3 0369 dated 2 November 1999, TC3 Between South East Asia and South West Pacific, Expedited Resolutions r22–r25, PTC3 0371 dated 2 November 1999, TC3 Between Japan, Korea, and South Asian Subcontinent Expedited, Resolution r26, PTC3 0372 dated 2 November 1999, TC3 Between Japan, Korea, and South East Asia Expedited Resolution r27, PTC3 0373 dated 2 November 1999, TC3 Between Japan, Korea, and South West Pacific Expedited, Resolutions r28–r36, Intended effective date: 1 December 1999, 1 January, 1 February 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–30414 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Report on Propulsion System and Auxiliary Power Unit (APU) Related Aircraft Safety Hazards

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of Technical Report on Propulsion System and Auxiliary Power Unit (APU) Related Aircraft Safety Hazards.

SUMMARY: This notice announces the availability of Technical Report on Propulsion System and Auxiliary Power Unit (APU) Related Aircraft Safety Hazard, dated October 25, 1999. In 1991, the Aerospace Industries Association (AIA) provided the Federal Aviation Administration (FAA) with a study aimed at the development of more effective methods to identify, prioritize and resolve safety-related problems occurring on commercial aircraft engines. The activity was undertaken as a result of the rapid increase in commercial aircraft entering revenue service, leading to a corresponding increase in the exposure to flight-safety events. The AIA team that developed the study was the Continued Airworthiness Assessment Methodologies (CAAM) Committee. This initial AIA study covered a variety of propulsion system and auxiliary power unit (APU) events. Later, the AIA recognized the need to update uncontained engine events, and prepared a supplemental report.

This FAA report is a compilation of both the initial and supplemental data from the above noted reports, and provides historical safety data that document propulsion system and APU-related aircraft safety hazards. The information provided in this FAA report has been used by the Engine and Propeller Directorate since 1994 to help identify and prioritize responses to potential engine, propeller and APU unsafe conditions.

How To Obtain Copies

A copy of the subject Technical Report may be obtained by contacting the Federal Aviation Administration, Attn: Ann Azevedo, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299. A copy of the subject report may also be obtained electronically by writing to the following Internet address ''ann.azevedo@faa.gov.''

Issued in Burlington, Massachusetts, on November 10, 1999.

David A. Downey,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–30396 Filed 11–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 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 December 22, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1515.

Regulation Project Number: REG–209817–96 (NPRM).

Type of Review: Extension.

Title: Treatment of Obligation-Shifting Transactions.

Description: Section 1.7701(1)–2 recharacterizes certain multiple-party financing transactions. Pass-through entities engaging in these transactions must reflect the required recharacterization on their books. This collection of information is required to verify compliance with the regulation and will be used to determine whether the amount of tax has been correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 100.

Estimated Burden Hours Per Recordkeeper: 5 hours.

Estimated Total Recordkeeping Burden: 500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 99–30314 Filed 11–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 245]

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the Legal Division Performance Review Board. This supersedes General Counsel Designation No. 241:

(1) For the General Counsel Panel—

Kenneth R. Schmalzbach, Acting

Deputy General Counsel, who shall serve as Chairperson;
Roberta K. McInerney, Assistant General Counsel (Banking & Finance);
Stephen J. McHale, Assistant General Counsel (Enforcement);
Russell L. Munk, Assistant General Counsel (International Affairs);
Rochelle F. Granat, Acting Assistant General Counsel (General Law & Ethics);
Francine J. Kerner, Deputy Assistant General Counsel (Enforcement);
Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);
Eleni Constantine, Deputy Assistant General Counsel (Banking & Finance);
John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;
Alfonso Robles, Chief Counsel, United States Customs Service; and
Walter Eccard, Chief Counsel, Bureau of Public Debt.

(2) For the Internal Revenue Service Panel—
Chairperson, Deputy Chief Counsel, IRS;
Deputy General Counsel;
Two Associate Chief Counsel, IRS; and
Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

November 15, 1999.

Neal S. Wolin,

Acting General Counsel.

[FR Doc. 99–30376 Filed 11–19–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday December 10, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday December 10, 1999, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555.

The public is invited to make oral comments from 6 p.m. to 6:30 p.m. on Friday December 10, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, PO Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 15, 1999.

John J. Mannion,

Chief, Special Projects.

[FR Doc. 99–30375 Filed 11–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting of the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC on Thursday, December 2, 1999. The meeting will be held in the Radisson Barcelo' Hotel, 2121 P Street, NW, Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Thursday, December 2, 1999

9:00 Meeting Opens
11:40 Break for Lunch
1:00 Meeting Resumes
3:15 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Importance of Advisory Committee
(2) Strategic Plan Update
(3) Self Preparer Strategy Sub-group
(4) Business e-commerce Sub-group
(5) Alliance Strategy Sub-group
(6) Strategic Planning Process Sub-group
(7) ERO Strategy Sub-group
(8) Modernization
(9) 2000 Advertising Campaign

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Assistant Commissioner, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service' (IRS') strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 150 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, notification of intent to attend the meeting should be made with Ms. Robin Marusin by November 30, 1999. Ms. Marusin can be reached at 202–622–8184. Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Monday November 23 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this

meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC, call Robin Marusin at 202–622–8184.

Dated: November 16, 1999.

Robert E. Barr,

Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 99–30374 Filed 11–18–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0005.''

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation by Parent(s), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine a parent's eligibility, dependency and income, as applicable, for death benefits. Without the information, entitlement to the benefit could not be determined.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 10, 1999 at page 43424.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,056 hours.

Estimated Average Burden Per Respondent: 1 hour and 12 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 20,880.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to ''OMB Control No. 2900–0005'' in any correspondence.

Dated: October 27, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–30325 Filed 11–19–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0031.''

SUPPLEMENTARY INFORMATION:

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by Loan Guaranty personnel in approving the benefits available under 38 U.S.C. 2101(a). The information requested is necessary in order to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 3, 1999 at pages 42170–42171.

Affected Public: Individuals or households.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 460.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0031'' in any correspondence.

Dated: November 1, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–30326 Filed 11–19–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits

Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0034.''

SUPPLEMENTARY INFORMATION:

Title: Trainee Request for Leave—Chapter 31, Title 38, U.S. Code, VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 28–1905h serves as the only document for requesting leave and for providing the information necessary to determine whether to approve the leave request. A trainer or authorized school official must verify on the form the effect the absence will have on the veteran's progress in the program. The case manager supervising the veteran's training approves or denies the leave request. Upon approval, the veteran can receive subsistence allowance and other program services during the leave period. Disapproval of the request may result in loss of subsistence allowance for the leave period. Failure to collect the information would create the potential for substantial abuse through receipt of benefits for unauthorized absences.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 3, 1999 at page 42171.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 30,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0034'' in any correspondence.

Dated: October 27, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–30327 Filed 11–19–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0107.''

SUPPLEMENTARY INFORMATION:

Title: Certificate as to Securities, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The form is used to verify investment in saving bonds and other securities reported in the accounting as part of the beneficiary's estate. The information provided on the form provides VA with an independent verification of the value of reported estate assets. Without independent verification of assets, account audits would be less useful in preventing asset diversion, fraud and abuse.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published August 3, 1999 at pages 42171–42172.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 4,316.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0107'' in any correspondence.

Dated: November 1, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–30328 Filed 11–19–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 22, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0265.''

SUPPLEMENTARY INFORMATION:

Title: Application for Counseling, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

The data collected is used to quickly assess applicant's entitlement to counseling, to call up further records if necessary, and to contact the applicant to schedule a counseling appointment. A veteran or dependent may use this form as a convenience to apply for counseling services.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 3, 1999 at page 42172.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 5,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0265'' in any correspondence.

Dated: October 27, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–30329 Filed 11–19–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Mayflower Park Hotel, 405 Olive Way, Seattle, WA, January 25, through 28, 2000. On January 25, the meeting will begin at 7:00 p.m. until 9:00 p.m. and on January 26 through 28, from 8:00 a.m. until 5:00 p.m. each day. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the January 25 session for approximately one half-hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Scientific Review Program Manager (124F), Health Research Services and Development Service, Department of Veterans Affairs, 1400 I Street, N.W., Suite 780, Washington, D.C., at least five days before the meeting. For further information, call (202) 408–3665.

Dated: November 4, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–30324 Filed 11–19–99; 8:45 am]

BILLING CODE 8320–01–M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 441/P.L. 106–95

Nursing Relief for Disadvantaged Areas Act of 1999 (Nov. 12, 1999; 113 Stat. 1312)

H.R. 609/P.L. 106–96

To amend the Export Apple and Pear Act to limit the applicability of the Act to apples. (Nov. 12, 1999; 113 Stat. 1321)

H.R. 915/P.L. 106–97

To authorize a cost of living adjustment in the pay of administrative law judges. (Nov. 12, 1999; 113 Stat. 1322)

H.R. 974/P.L. 106–98

District of Columbia College Access Act of 1999 (Nov. 12, 1999; 113 Stat. 1323)

H.R. 2303/P.L. 106–99

History of the House Awareness and Preservation Act (Nov. 12, 1999; 113 Stat. 1330)

H.R. 3122/P.L. 106–100

To permit the enrollment in the House of Representatives Child Care Center of children of Federal employees who are not employees of the legislative branch. (Nov. 12, 1999; 113 Stat. 1332)

H.J. Res. 54/P.L. 106–101

Granting the consent of Congress to the Missouri-Nebraska Boundary Compact. (Nov. 12, 1999; 113 Stat. 1333)

S. 900/P.L. 106–102

Gramm-Leach-Bliley Act (Nov. 12, 1999; 113 Stat. 1338)

H.R. 348/P.L. 106–103

To authorize the construction of a monument to honor those who have served the Nation's civil defense and emergency management programs. (Nov. 13, 1999; 113 Stat. 1482)

H.R. 3061/P.L. 106–104

To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act. (Nov. 13, 1999; 113 Stat. 1483)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
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400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
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Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.