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The President

Proclamation 7338 of September 14, 2000

National Hispanic Heritage Month, 2000

By the President of the United States of America

A Proclamation

American society today embraces a remarkable breadth of cultures, and Hispanics are an integral part of this diversity. The Hispanic American community is a collage of distinct groups, including people with roots in Central and South America, Mexico, the Caribbean, and Spain. Hispanics have been an important part of the history and heritage of the Americas since the earliest days of European colonization, and today Hispanic Americans are the youngest and fastest-growing minority community in our Nation. Devoted to family, faith, country, and hard work, they bring unique perspectives and experiences to our national community and character.

The vibrant Hispanic influence can be seen in all aspects of American life and culture, from distinctive cuisine to colorful festivals, and from the rhythms and melodies of traditional music to the contagious beat of today's most popular songs. Throughout our Nation, Hispanic men and women have distinguished themselves in every endeavor and, with our cultural and linguistic ties to our trading partners throughout the Western Hemisphere, Hispanic Americans are crucial to maintaining our Nation's competitiveness and prosperity in the global economy of the 21st century.

Not long ago I had the privilege of awarding the Presidential Medal of Freedom, our Nation's highest civilian honor, to Cruz Reynoso, a man who has devoted his life to promoting civil rights and championing equal opportunity for all our people. A son of Mexican immigrants, he has lived the American Dream, going to college and working his way up to become the first Hispanic American to serve on the California Supreme Court. A force for positive social change in our Nation, he is just one of many talented Hispanic Americans enriching our national life.

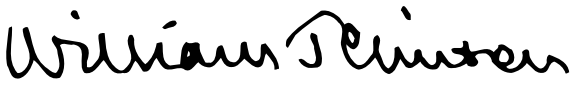
Cruz Reynoso's success underscores what we already know: education and equal opportunity are the keys to ensuring that people of Hispanic heritage can take full advantage of America's promise. My Administration has focused on improving educational opportunities for Hispanic children through the Hispanic Education Action Plan, as well as by reducing class sizes across our Nation, greatly expanding the Head Start program, working to turn around failing schools, and making college more affordable through tax incentives and scholarships. By expanding the Earned Income Tax Credit, raising the minimum wage, and moving people from welfare to work, my Administration has also helped expand economic opportunity for Hispanic American working families. We have brought the Hispanic unemployment rate to its lowest level on record and the Hispanic poverty rate to a 20-year low. We have also worked hard to create an Administration that truly reflects America, with the most Hispanic appointees and the most Hispanic judicial nominees in our Nation's history.

Even as Hispanic Americans grow in number and influence in our country, they have not forgotten their roots; they have not forgotten the pain of discrimination, of being ignored or left behind. Instead, millions of courageous and compassionate Hispanic men and women across our country are working to create a just and equal society, uniting around a firm commitment to build One America in this new century.

In honor of the many contributions that Hispanic Americans have made and continue to make to our Nation and culture, the Congress, by Public Law 100–402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 2000, as National Hispanic Heritage Month. I call upon all Americans to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Presidential Documents

Proclamation 7339 of September 14, 2000

National Historically Black Colleges and Universities Week, 2000

By the President of the United States of America

A Proclamation

Rooted in the segregated South of more than a century ago, Historically Black Colleges and Universities (HBCUs) for decades were the sole source of higher education for African Americans. Generations of African American educators, physicians, lawyers, scientists, and other professionals found at HBCUs the knowledge, experience, and encouragement they needed to reach their full potential. Over the years, HBCUs have compiled an enviable record of achievement, educating almost forty percent of our Nation's black college graduates. Today, building on that tradition of excellence in education, HBCUs confer the majority of bachelor's degrees and advanced degrees awarded to black students in the physical sciences, mathematics, computer science, engineering, and education.

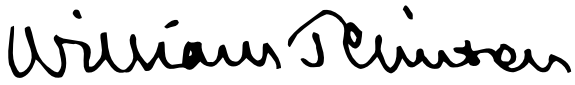
And HBCUs have accomplished this record in the face of daunting challenges—including limited financial resources and a relatively high percentage of disadvantaged students—without resorting to high tuition fees. The faculty and staff of HBCUs have created a nurturing environment for their students, set high academic standards and expectations, and served as inspiring role models for the young people around them. As a result, the dropout rate at HBCUs is much lower than for African American students at other educational institutions, and enrollment remains high.

In addition to educating many of our Nation's most distinguished African American professionals, HBCUs reach out to improve the quality of life in surrounding communities. Whether renovating housing, providing job training, instituting Head Start and senior citizen programs, mentoring elementary and high school students, or teaching nutrition, the students and faculty of HBCUs share their time, talents, and educational resources to make a positive difference in thousands of lives. Just as important, HBCUs serve as living repositories of African American history and heritage, preserving the words and artifacts of proud generations of African Americans and reminding us of the crucial part these men and women have played in the history of our Nation.

For well over a century, HBCUs have made their mark as vital institutions of higher learning. They have educated millions of young people, and today they maintain their lead role in preparing African Americans and students of all races for the challenges and opportunities of this new century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 17 through September 23, 2000, as National Historically Black Colleges and Universities Week. I call upon the people of the United States, including government officials, educators, and administrators, to observe this week with appropriate programs, ceremonies, and activities honoring America's Historically Black Colleges and Universities and their graduates.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Presidential Documents

Proclamation 7340 of September 14, 2000

National POW/MIA Recognition Day, 2000

By the President of the United States of America

A Proclamation

This year marks the 50th anniversary of the onset of the Korean War and the 25th anniversary of the end of the war in Vietnam. For many Americans, these milestones bring difficult memories; for former prisoners of war and the families of those still missing in action, these anniversaries evoke particularly painful memories and emotions.

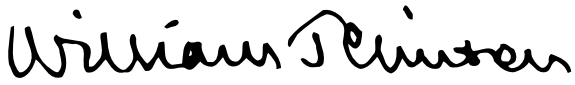
In both of these conflicts, hundreds of thousands of brave Americans left their homes and families to defend freedom and democracy in the face of communist aggression. Thousands lost their lives in battle, and the fate of 10,000 Americans is still unknown—they are missing in action. We know that many Americans held captive were subjected to unspeakable horrors, but throughout maintained their honor, strong faith in our Nation, and indomitable spirit.

There are approximately 50,000 courageous former POWs living among us, including those held captive during World War II. Many still cope with the physical and emotional effects of their captivity. We owe a profound debt of gratitude to these quiet heroes who served our Nation so well and sacrificed so much. And to the families of those still missing in action, we pledge our unwavering commitment to achieve the fullest possible accounting for their loved ones and to seek the recovery, repatriation, and identification of the remains of those who have died.

On September 15, 2000, the flag of the National League of Families of American Prisoners of War and Missing in Southeast Asia, a black and white banner symbolizing America's missing service members and our unshakable resolve to ascertain their fate, will be flown over the White House, the U.S. Capitol, the Departments of State, Defense, and Veterans Affairs, the Selective Service System Headquarters, the Vietnam Veterans Memorial, the Korean War Veterans Memorial, national cemeteries, and other locations across our country—a powerful reminder to the world that we will keep faith with those who so faithfully served America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 15, 2000, as National POW/MIA Recognition Day. I call upon all Americans to join me in remembering former American prisoners of war who suffered the hardships of enemy captivity and those missing in action whose fate is still undetermined. I call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Rules and Regulations

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

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1811–96]

RIN 1115–AE61

Habitual Residence in the Territories and Possessions of the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations relating to the rights and limitations of habitual residents in the territories and possessions of the United States under:

- The Compact of Free Association between the United States and the Government of the Republic of the Marshall Islands and the Government of the Federated States of Micronesia; and
- The Compact of Free Association between the United States and the Government of Palau.

This amendment defines the rights and limitations of nonimmigrant habitual residents of the territories and possessions of the United States, other than American Samoa and the Northern Mariana Islands, who were admitted to those territories or possessions pursuant to the provisions of those Compacts. The final rule establishes a policy that protects the rights of both habitual residents electing to reside in United States territories and possessions and the citizens of the territories and possessions.

DATES: This final rule is effective September 19, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Headquarters Adjudications Officer, Business and Trade Services, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Background

Why Are We Issuing This Regulation?

Public Law 99–239 approved the Compact between the United States and the Government of the Republic of the Marshall Islands and the Government of the Federated States of Micronesia, and Public Law 99–658 approved the Compact between the United States and Palau (collectively, Compacts). Under the Compacts, the majority of citizens of these newly formed states (parts of the former Trust Territories of the Pacific Islands, now called the freely associated states (FAS)) became eligible to enter, live, work, and be educated in the United States and its territories and possessions without regard to sections 212(a)(5)(A) and 212(a)(7) (A) and (B) of the Immigration and Nationality Act (Act), formerly sections 212(a) (14), (20), and (26). Section 141(a) of the Compacts. Both Compacts, at section 141(b), provide that the right of citizens of the FAS, who were admitted to the territories or possessions of the United States pursuant to the provisions of the Compacts, to establish habitual residence in a territory or possession of the United States may be subject to nondiscriminatory limitations.

The Service interprets section 141(b) of the Compacts to the effect that citizens of the FAS who enter the territories and possessions of the United States pursuant to section 141(b) of the Compacts are subject to limitations not only at the time they establish their habitual residence but for the entire duration of their habitual residence. The negotiators of the Compacts realized that while the economy of the island territories was fragile, the vast majority of the FAS citizens would actively participate in and be beneficial to it. On the other hand, there would be some who would not be gainfully employed or who would even engage in welfare fraud and thus become a burden on the territorial economy. Section 141(b) is directed at such entrants from the FAS. It is immaterial for the territorial economy whether this burden exists at the time when the FAS citizen first established his or her habitual residence in the territory or whether it occurs at a later time. The Service cannot attribute to the parties concluding the Compacts an intent that, once a citizen from the FAS first establishes his habitual residence in a territory or possession, he or she is immune from the future imposition of the limitations envisaged by section 141(b). The Service therefore reads the word ''establishment'' as necessarily including ''maintenance,'' and uses that word accordingly in this rule.

Section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, requires the Commissioner of the Immigration and Naturalization Service to issue regulations regarding the ''rights of 'habitual residence' in the United States'' under the terms of the Compacts.

What Is a ''Habitual Resident''?

''Habitual resident'' refers to an individual who is an FAS citizen who has been admitted to a territory or possession of the United States (except the Commonwealth of the Northern Mariana Islands or American Samoa as long as the Act has not been made applicable there) pursuant to section 141(a) of the Compacts, and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely, a place of general abode or a principal, actual dwelling place of a continuing or lasting nature, including physical presence for a cumulative total of at least 365 days, and who is not a: (1) Full-time student under the Compact provisions; or a (2) dependent of a resident representative as described in section 152 of the Compacts. Since the term ''habitual resident'' requires that the person have entered the United States pursuant to section 141(a) of the Compacts, the term does not apply to FAS citizens whose presence in the territories or possessions is based on an authority other than section 141(a), such as members of the Armed Forces of the United States described in 8 CFR § 235.1(c), persons lawfully admitted for permanent residence in the United States, or persons having nonimmigrant status whose entry into the United States is based on provisions of the Compacts or the Act other than section 141(a) of the Compacts.

What Does This Regulation Accomplish?

This regulation is intended to define the rights of and limitations on habitual residence under the Compacts. In particular, the limitations relate to grounds for the possible removal of a habitual resident from the United States. The increasing presence of citizens of the FAS in the territories and possessions of the United States requires action to ensure that the benefits to the citizens of the FAS of employment and education in the territories and possessions, and the economic benefit to the territories and possessions of their presence are maintained, while simultaneously minimizing the impact on the territories and possessions resulting from granting unlimited access of such FAS citizens.

Where Does This Rule Apply?

This rule applies to habitual residents living in the territories and possessions of the United States to which the Act applies. These territories and possessions are at present Guam, the Commonwealth of Puerto Rico, and the American Virgin Islands.

This rule does not apply to FAS citizens residing in American Samoa or the Commonwealth of the Northern Mariana Islands, as long as the Act does not apply to them, or to FAS citizens residing in the fifty States or the District of Columbia.

Did the Service Publish a Rule Prior to Issuing This Final Rule?

On June 4, 1998, the Service published a proposed rule at 63 FR 30415. Written comments were to be submitted on or before August 3, 1998. The Service received three comments. The following is a discussion of the public comments and the Service's responses.

Discussion of Comments

All commenters expressed concern with the proposed definition of ''dependents,'' in particular, limiting dependents to an unemployed spouse, parents and unmarried children under 21 years of age. In the opinion of one commenter, this ignores the realities of family life in the Pacific Islands. However, it would not be workable to include distant relatives and family friends in the definition of ''dependents,'' as the writers advocated. In addition, the need to minimize any increase in social service expenditures by the territory and possession governments on behalf of habitual resident dependents renders the above-noted definition necessary.

One commenter recommended that the poverty guidelines established by the Department of Health and Human Services (HHS) that are required of the family unit be made applicable to the single individual with no family. Under the proposed rule, only 40 hours of ''gainful employment'' each week, regardless of his or her salary, were required of such an individual. Another commenter suggested striking altogether the requirement that the financial resources of the family unit meet or exceed 100 percent of these poverty guidelines. Another suggestion involved adjusting the HHS official poverty guideline standard to reflect the actual circumstances in Guam.

The Service lacks the needed expertise in matters relating to determining poverty guidelines to make meaningful adjustments to the HHS official poverty guidelines so as to reflect the actual circumstances in Guam, the territory most affected by this rulemaking. By incorporating the requirement that a habitual resident be ''self-supporting,'' however, the standard becomes based on the ability to financially support oneself with regard to local conditions. Further, ''self-supporting'' is defined in the final rule as either: (a) Having a lawful occupation of a current and continuing nature which provides 40 hours of gainful employment each week, without regard to the actual income or size of the family (for part-time students in college or institutions of higher learning the 40-hour requirement is reduced by three hours for each college or graduate credit-hour of study); or (b) in the case of a person employed for less than 40 hours a week or not at all, having lawfully derived funds that meet or exceed 100 percent of the official poverty guidelines for Hawaii for a family unit of the appropriate size as published annually by HHS. This approach provides what the Service views as a simple, fair, and flexible standard consistent with the Compacts.

All commenters voiced concern over adequate enforcement procedures. The writers suggested implementation of a registration system financed from revenues collected from the Service operation on Guam. These commenters wrote that the Service collects more revenue via fees than it expends in fulfilling its statutory obligations on Guam. However, the Service notes that, with the exception of a $6 Inspections user fee that all arriving persons pay upon entering Guam by air, immigration fees collected by the Service within Guam are not retained by the Service but are turned over to the Treasurer of Guam, pursuant to section 30 of the Organic Act of Guam, 48 U.S.C. 1421(h). In addition, the Inspections user fee does not currently cover the Service's operational costs on Guam. Appropriated funds are used to make up the difference. Therefore, there are no surplus funds from the Inspections user fee account that can be used to finance the enforcement efforts advocated by the commenters.

The Service is aware of the difficulties in enforcing the proposed rule in an *ad hoc* fashion. In order to address the concerns of the commenters and to be in compliance with our own obligation to enforce the nondiscriminatory limitations on habitual residence provided for by the Compacts and Congress, the Service intends to work with the Government of Guam and the United States Department of the Interior in order to establish methods to fairly enforce the nondiscriminatory limitations on habitual residence. (The term ''nondiscriminatory'' is discussed in the supplementary information portion of the proposed rule. Since the Service has made no changes in how the term is used, there is no need here for further discussion.)

The Service will enforce the existing requirement that all nonimmigrants, including FAS citizens entering a United States territory, complete Service Form I–94, Arrival-Departure Record, and turn it in, as required, upon departure. See 8 CFR 235.1(f) The Service may extract information from the I–94 for possible enforcement purposes and may share this information with the Government of Guam on an as-needed basis.

The final rule, therefore, establishes the rebuttable presumption that an FAS citizen is a habitual resident if the Service has reasons to believe that the FAS citizen was admitted to a United States territory more than a year ago but failed to turn in his or her I–94 upon departure, or failed to apply for a replacement arrival-departure record. Having the correct information, as gleaned from the I–94, on a particular FAS citizen's arrival and departure is important. Without such information the Service will now know how much time the FAS citizen has previously spent within the territory, and therefore may not know whether or not the FAS citizen is a habitual resident.

This presumption approach the Service intends to use is similar to the concept employed in a parking lot in order to determine the amount a driver must pay for parking. Upon entering the lot, the driver gets a ticket and then turns it in upon leaving to determine how much to pay. If the driver loses his or her ticket, the parking lot charges the

driver for the maximum amount of time, since the parking lot attendant is able to know only when the driver is leaving. The burden is always on the driver to prove the time of entry into the parking lot. In this example, the driver's entry is proven via the parking lot ticket.

The Service will apply the same concept to the situation at hand. If the Service only knows when the FAS citizen was previously admitted, the burden is on the FAS citizen to show when he or she departed. The form itself requires that it be surrendered upon departure. The presumption can be rebutted by evidence that the FAS citizen was not in the territory for a total of at least 365 days and has not established a continuing or lasting residence. If the FAS citizen can prove he or she made an entry elsewhere on a specific date, that will demonstrate that he or she was not in the territory between that date and the date of his or her next application for admission to the United States territory.

The Service notes that the definition of ''habitual resident'' has been modified in this context in order to conform more closely to the definition of ''habitual residence'' found in section 461 of the Compacts. In particular, the Service notes that for an FAS citizen to be considered a habitual resident, he or she must have a continuing or lasting residence in the United States territory after an admission, including physical presence for a cumulative total of at least 365 days. The fact that an FAS citizen may be a habitual resident does not necessarily render the FAS citizen inadmissible to the United States territory. For example, if the resident is self-supporting, he or she may not necessarily be inadmissible.

Finally, organization of the final rule is different from that of the proposed rule in order to comply with the plain-language requirements currently used by Executive Branch agencies in drafting regulations.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule affects relatively small communities, primarily on Guam. Because the rule would require that the nonimmigrant be self-supporting in order to establish and maintain habitual residence in a territory or possession of the United States, the impact of the rule on the local economies should be positive.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

The regulation proposed 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 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Summary Impact Statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professionals, Reporting and recordkeeping requirements, Students.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.7 is added to read as follows:

§ 214.7 What is habitual residence in the territories and possessions of the United States and what are the consequences thereof?

(a) *Definitions.* As used in this section, the term:

(1) *Compacts* means the agreements of free association between the United States and the governments of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau, approved by Public Law 99–239 with respect to the governments of the Republic of the Marshall Islands and the Federated States of Micronesia, and by Public Law 99–658, with respect to Palau.

(2) *Freely associated states (FAS)* means the following parts of the former Trust Territories of the Pacific Islands, namely, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

(3) *Territories and possessions of the United States* means all territories and possessions of the United States to which the Act applies, including those commonwealths of the United States that are not States. It does not include American Samoa and the Commonwealth of the Northern Mariana Islands, as long as the Act does not apply to them.

(4)(i) *Habitual resident* means a citizen of the FAS who has been admitted to a territory or possession of the United States (other than American Samoa or the Commonwealth of the Northern Mariana Islands, as long as the Act is not applicable to them) pursuant to section 141(a) of the Compacts and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. The term ''habitual resident'' does not apply to:

(A) A person who has established a continuing residence in a territory or possession of the United States, but whose cumulative physical presence in the United States amounts to less than 365 days; or

(B) A dependent of a resident representative described in section 152 of the Compacts; or

(C) A person who entered the United States for the purpose of full-time studies as long as such person maintains that status.

(ii) Since the term ''habitual'' resident requires that the person have entered the United States pursuant to section 141(a) of the Compacts, the term does not apply to FAS citizens whose presence in the territories or possessions is based on an authority other than section 141(a), such as:

(A) Members of the Armed Forces of the United States described in 8 CFR § 235.1(c);

(B) Persons lawfully admitted for permanent residence in the United States; or

(C) Persons having nonimmigrant status whose entry into the United States is based on provisions of the Compacts or the Act other than section 141(a) of the Compacts.

(5) *Dependent* means a citizen of the FAS, as defined in section 141(a) of the Compacts, who:

(i) Is a habitual resident;

(ii) Resides with a principal habitual resident;

(iii) Relies for financial support on that principal habitual resident; and

(iv) Is either the parent, spouse, or unmarried child under the age of 21 of the principal habitual resident or the parent or child of the spouse of the principal habitual resident.

(6) *Principal habitual resident* means a habitual resident with whom one or more dependents reside and on whom dependent(s) rely for financial support.

(7) *Self-supporting* means:

(i) Having a lawful occupation of a current and continuing nature that provides 40 hours of gainful employment each week. A part-time student attending an accredited college or institution of higher learning in a territory or possession of the United States receives for each college or graduate credit-hour of study a three-hour credit toward the 40-hour requirement; or

(ii) If the person cannot meet the 40-hour employment requirement, having lawfully derived funds that meet or exceed 100 percent of the official poverty guidelines for Hawaii for a family unit of the appropriate size as published annually by the Department of Health and Human Services.

(8) *Receipt of unauthorized public benefits* means the acceptance of public benefits by fraud or willful misrepresentation in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 638. 639.

(b) *Where do these rules regarding habitual residence apply?* The rules in this section apply to habitual residents living in a territory or possession of the United States to which the Act applies. Those territories and possessions are at present Guam, the Commonwealth of Puerto Rico, and the American Virgin Islands. These rules do not apply to habitual residents living in American Samoa or the Commonwealth of the Northern Mariana Islands, as long as the Act does not extend to them. These rules are not applicable to habitual residents living in the fifty States or the District of Columbia.

(c) *When is an arriving FAS citizen presumed to be a habitual resident?* (1) An arriving FAS citizen will be subject to the rebuttable presumption that he or she is a habitual resident if the Service has reason to believe that the arriving FAS citizen was previously admitted to the territory or possession more than one year ago; and

(2) That the arriving FAS citizen either;

(i) Failed to turn in his or her Form I–94 when he or she previously departed from the United States; or

(ii) Failed to apply for a replacement Form I–94.

(d) *What rights do habitual residents have?* Habitual residents have the right to enter, reside, study, and work in the United States, its territories or possessions, in nonimmigrant status without regard to the requirements of sections 212(a)(5)(A) and 212(a)(7)(A) and (B) of the Act.

(e) *What are the limitations on the rights of habitual residents?* (1) A habitual resident who is not a dependent is subject to removal if he or she:

(i) Is not and has not been self-supporting for a period exceeding 60 consecutive days for reasons other than a lawful strike or other labor dispute involving work stoppage; or

(ii) Has received unauthorized public benefits by fraud or willful misrepresentation; or

(iii) Is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

(2) Any dependent is removable from a territory or possession of the United States if:

(i) The principal habitual resident who financially supports him or her and with whom he or she resides, becomes subject to removal unless the dependent establishes that he or she has become a dependent of another habitual resident or becomes self-supporting; or

(ii) The dependent, as an individual, receives unauthorized public benefits by fraud or willful misrepresentation; or

(iii) The dependent, as an individual, is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

Dated: September 12, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–23788 Filed 9–18–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–32]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends FAA regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9H, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

DATES: These regulations are effective September 16, 2000, through September 15, 2001. The incorporation by reference of FAA Order 7400.9H is approved by the Director of the Federal Register as of September 16, 2000, through September 15, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Brown, Janet Glivings, or Christine Graves, Airspace and Rules Division (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, listed Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9G in § 71.1, effective September 16, 1999, through September 15, 2000. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9G in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9H. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9H in § 71.1, as of September 16, 2000, through September 15, 2001. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9H.

The Rule

This action amends part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9H, effective September 16, 2000, through September 15, 2001. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9H in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

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 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9H is effective September 16, 2000, through September 15, 2001. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9H may be obtained from the Airspace and Rules Division, ATA–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. Copies of FAA Order 7400.9H may be inspected in Docket No. 29334 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, D.C., weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 2000, through September 15, 2001.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words ''FAA Order 7400.9G'' and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words ''FAA Order 7400.9G'' and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.33 [Amended]

5. Paragraph (c) of § 71.33 is amended by removing the words ''FAA Order 7400.9G'' and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.41 [Amended]

6. Section 71.41 is amended by removing the words ''FAA Order 7400.9G'' each place they appear and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.51 [Amended]

7. Section 71.51 is amended by removing the words ''FAA Order 7400.9G'' each place they appear and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.61 [Amended]

8. Section 71.61 is amended by removing the words ''FAA Order 7400.9G'' each place they appear and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.71 [Amended]

9. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words ''FAA Order 7400.9G'' and

adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.79 [Amended]

10. Section 71.79 is amended by removing the words ''FAA Order 7400.9G'' and adding, in their place, the words ''FAA Order 7400.9H''.

§ 71.901 [Amended]

11. Paragraph (a) of § 71.901 is amended by removing the words ''FAA Order 7400.9G'' and adding, in their place, the words ''FAA Order 7400.9H''.

Issued in Washington, DC, September 8, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–23673 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–13]

Amendment to Class E Airspace; Fairfield, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Fairfield, IA.

DATES: The direct final rule published at 65 FR 40991 is effective on 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (861) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 3, 2000 (65 FR 40991). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: Issued in Kansas City, MO on September 6, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2394 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 7, 10, 14, 19, 25, 101, 107, 110, 114, 170, 310, 312, 314, 316, 500, 514, 601, 803, 814, and 860

[Docket No. 99N–4783]

Administrative Practices and Procedures; Good Guidance Practices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its administrative regulations to codify its policies and procedures for the development, issuance, and use of guidance documents. This action is necessary to comply with requirements of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The Modernization Act codified certain parts of the agency's current ''Good Guidance Practices'' (GGP's) and directed the agency to issue a regulation consistent with the act that specifies FDA's policies and procedures for the development, issuance, and use of guidance documents. The intended effect of this regulation is to make the agency's procedures for development, issuance, and use of guidance documents clear to the public.

DATES: This rule is effective October 19, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 405 of the Modernization Act (Public Law 105–115), statutory provisions on guidance documents were added to the Federal Food, Drug, and Cosmetic Act (the act) in section 701(h) (21 U.S.C. 371(h)). In the **Federal Register** of February 14, 2000 (65 FR 7321), we (FDA) proposed changes to our existing part 10 (21 CFR part 10) regulations to clarify our procedures for the development, issuance, and use of guidance documents. Interested parties were given until May 1, 2000, to comment on the proposal.

II. Description of the Final Rule

A. Comments and Agency Response

We received 18 comments on the proposed rule, largely from trade organizations. The comments we received generally supported the policies and procedures described in the GGP's.

1. General Comment

(Comment 1) One comment recommended that we include in this preamble a list of generally accepted principles of a good guidance document. The comment nominated several principles for inclusion on the list.

We decline to develop a list of generally accepted principles of a ''good'' guidance document because we believe that the procedures described in § 10.115 reflect generally accepted principles for developing, issuing, and using guidance documents. For example, a good guidance document represents our current thinking on a matter and clearly states that it does not establish legally enforceable requirements. We expect each guidance document developed, issued, and used under the rule to have the characteristics of a good guidance document.

2. Definition of Guidance Documents

(Comment 2) One comment suggested that we include in the definition of guidance documents those documents that describe our current policies regarding labeling and promotion.

In our proposal, we defined guidance documents to include, among other kinds of documents, those that relate to the design, production, manufacturing, and testing of regulated products and those that relate to inspection or enforcement policies. We interpret our definition to include guidance documents about product labeling and promotion. We are amending the definition in § 10.115(b)(2) to clarify our intent to include such topics as subjects for guidance documents.

3. Comprehensive List of Guidance Documents and Guidance Document Agenda

(Comment 3) Several comments discussed the annual publication of the comprehensive list of guidance documents and the guidance document

agenda. Some suggested that we continue to publish these lists on a semiannual basis.

Some comments stated that yearly publication of the comprehensive list is acceptable, particularly given that we maintain a current list on the Internet.

One comment stated that annual publication of the guidance document agenda would be reasonable if we include the status of each item on the list and identify the highest priority guidance documents. Another comment recommended that the agenda be posted on the Internet.

We believe that we provide adequate notice of and access to all available guidance documents through two mechanisms. We annually publish a comprehensive list of guidance documents in the **Federal Register** and we maintain current (i.e., updated within 30 days of the issuance of a new or newly revised guidance document or the deletion of an obsolete guidance document) lists of guidance documents on the Internet.

We also believe that we provide adequate notice of the guidance document agenda through its annual publication in the **Federal Register**. We will not include the status of each document on the agenda. Each document listed on the agenda is being developed; further description of document status would not be practical because it would be too difficult to differentiate the stages of guidance document development. We also do not believe it would be feasible to prioritize the documents on the agenda. Often, resources allocated to the development of a particular document are diverted to creating guidance documents regarding other areas of greater public health need. As a result, our priorities may change throughout the year and priorities stated on the agenda would not remain accurate for an extended period of time. We try to maintain a current (i.e., updated at least semiannually) guidance document agenda on the Internet.

In efforts separate from this rulemaking, we are considering ways to enhance our lists of guidance documents maintained on the Internet. For example, we are trying to make the lists easier to navigate and search. These enhancements may allow you to more efficiently find the information you seek on the comprehensive list and the agenda.

(Comment 4) One comment suggested that we include a brief statement describing each document on the comprehensive list.

We understand that much of the value of the comprehensive list lies in its ability to convey the subject matter of each document on the list. To provide this information adequately, we plan to ensure that the titles or subtitles of documents convey the subject of the document more precisely. The comprehensive list could become too cumbersome and difficult to use if we added a description of the subject of each document. Therefore, we will not include a separate statement describing each document on the comprehensive list.

(Comment 5) A comment stated that the comprehensive list should identify guidance documents that have been revised or are currently being considered for revision.

Through the lists that we publish under the procedures previously described, we already make the information requested in the comment available to the public. On the comprehensive list, we include the date of the last revision of a guidance document. This enables you to identify those guidance documents that have been revised and the date of the revision. In our guidance document agenda, we list guidance documents that are under consideration for development or revision.

(Comment 6) In § 10.115(c), we define two levels of guidance documents, Level 1 and Level 2. The two levels of guidance documents are subject to different procedures for public participation before issuance. One comment suggested that we include the designation for each document as Level 1 or Level 2 in the prospective list of guidance documents.

We decline the suggestion to include the Level 1 or Level 2 designation for all documents on the guidance document agenda. Generally, at the time we issue the agenda, we do not know the full content of the proposed documents. Thus, a determination of whether a document meets the criteria for a Level 1 designation (§ 10.115(c)(1)) would be premature.

(Comment 7) One comment suggested that we make the guidance document agenda more user-friendly by separating guidance documents on cross-cutting issues from those that are technology-specific.

The purpose of the guidance document agenda is to notify you of guidance documents we are developing so you may comment on topics for new documents and possible revisions to existing documents. We believe the guidance agenda is currently organized to disseminate this information most effectively. The documents on the agenda are organized by the issuing center or office and generally are further grouped by topic categories. By separating guidance documents according to the issuing center or office, we enable those of you who have interest in a particular issue or type of product (e.g., food products) to focus on documents that are being developed in one of the centers or offices (e.g., the Center for Food Safety and Applied Nutrition). Guidance documents that are being developed in more than one center or office will appear on the agenda for each participating center or office. Grouping documents on the agenda by subject category (e.g., electronic submissions) provides you greater ability to focus on specific areas of interest. After the effective date of the rule, we will group all guidance documents on the agenda by subject category. This format is consistent with the format of the comprehensive list of guidance documents. We believe that the format suggested in the comment could make the agenda difficult to use because you would not be able to concentrate effectively on a particular topic of interest.

4. Public Input

(Comment 8) One comment suggested that we implement procedures to give you the opportunity to comment on designation of a document as a Level 1 or Level 2 guidance document before the decision is made.

We decline to adopt this suggestion. It is in the best interest of promoting and preserving the public health that we be able to develop guidance documents in a timely and efficient manner. If we solicited comment on the level designation for each guidance document, we would create a procedural hurdle that could significantly slow the guidance development process. This delay in the development of guidance documents would not serve us or you.

We determine whether a document is Level 1 or Level 2 based on the criteria described in § 10.115(c). If you disagree with the designation of a document (e.g., if you believe that a guidance issued as a Level 2 should have been issued as a Level 1), you may send us an explanation of your reasons for disagreeing with our determination when you comment on the guidance document. If, after issuance, you still have a disagreement, you can appeal our designation using the dispute resolution process.

(Comment 9) One comment suggested that we announce the development and issuance of Level 2 documents in the **Federal Register**. Another comment recommended that we receive comments on Level 2 guidance

documents before we issue them as final guidance.

We decline to amend our procedures for announcing and receiving comment on Level 2 guidance documents. When we issue Level 2 documents, they are immediately posted on the Internet. Also, their issuance is announced in the comprehensive list of guidance documents that is published annually in the **Federal Register** and maintained on the Internet.

Under section 701(h)(1)(D) of the act, we must solicit public comments ''upon implementation'' of guidance documents that describe existing practices or minor changes in agency policy. We believe the provisions of § 10.115(g)(4) are consistent with the act and describe adequate provisions for developing and issuing Level 2 guidance documents.

(Comment 10) Under § 10.115(g)(1)(v), we may issue a second draft of a guidance document and solicit comment on the document after providing an opportunity for comment on the first draft. One comment stated that two situations usually merit this procedure: When the first draft guidance on a medical or scientific topic is highly controversial and when the first draft guidance is in conflict with other widely recognized sources of scholarly guidance (e.g., International Conference on Harmonization guidance, pharmacopeial standards).

We agree that it may be appropriate for us to issue a second draft of a guidance document in the two situations described in the comment. In addition, it may also be appropriate for us to issue a second draft guidance in other circumstances. For example, if we revise a document for clarification, we may want to issue a second draft guidance document to receive comment on whether our revisions made the document easier to understand.

(Comment 11) One comment suggested that we allow the public to request the deletion of guidance documents that are no longer useful.

Under § 10.115(f), you can suggest that a document on the comprehensive list of guidance documents or on the guidance document agenda be revised or withdrawn if you find that the document is no longer relevant or accurate. We amended the final rule to explicitly state that you can suggest that a guidance be withdrawn (§ 10.115(f)(4)).

(Comment 12) Many comments urged us to include a provision in the regulation requiring us to provide written responses to public comments or suggestions for revising guidance documents. One comment stated that we should respond to each suggestion for a revision to an existing guidance document within 90 days. Other comments stated that we should explain to the public why we changed, or why we did not change, a guidance document between the draft and final stages. Some comments recommended that we provide general responses to comments grouped by topic. Others suggested that we be required to issue a written response when certain criteria are met (e.g., when a majority of the comments on a guidance document concern the same issue).

We believe that it is in the public interest to have an efficient process for developing guidance documents. The guidance document development process would be hampered if we were required to respond to each comment. When comments received are very significant or cause us to revise a guidance, we often discuss those comments in the notice of availability (NOA) for the final guidance or in the final guidance document. We intend to continue this practice. However, making a firm commitment to provide a written response to all comments when issuing a final guidance would unnecessarily delay the issuance of the document.

(Comment 13) Two comments suggested that we be required to respond to your proposals for draft guidance documents.

We agree with this comment. When you have taken the time to develop a guidance document and submit it to us for review, you should receive, at a minimum, an acknowledgment of receipt of the document. Therefore, we are now accepting guidance document submissions at the Dockets Management Branch. If you submit a document to us, you should designate it as a ''Guidance Document Submission,'' include the name of the center or office with oversight over the subject matter covered by the guidance document, and submit the document to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The Dockets Management Branch will ensure that the document is assigned a public docket number and it is sent to the appropriate office or center. All proposed guidance documents will be available through the public docket. We will send you a written acknowledgment that we have received your document, and to the extent feasible, we also will inform you of our actions regarding the document you have submitted. These changes to the final rule are included in revised § 10.115(f)(3).

(Comment 14) We received many comments on early collaboration and meetings to discuss guidance documents as they are being developed. Generally, the comments were very supportive of our efforts to facilitate early interaction with you. Some comments suggested that we issue a clear policy about the procedures for collaboration and early meetings. One suggested that we provide a means for industry to recommend a particular collaborative approach for a guidance document under development. Another comment recommended that we provide opportunities for you to engage in ''real time dialogues'' with us before we begin to write a draft or final guidance. The comment noted a number of avenues for this type of collaboration, including joint task forces, public and private meetings, advisory committee meetings, and e-mail correspondence. Other comments stated that certain agency components had refused to meet about a guidance document before that document was issued in draft. One comment specifically requested that we use more mandatory language regarding preproposal collaboration with you.

We agree that early collaboration (i.e., input from you in the early stage of developing the approach we will take in a new or revised guidance document) can be a very valuable tool in developing regulatory guidance. We have created several mechanisms to encourage early input, including the following:

- We provide an opportunity to suggest new or revised guidance.
- We publish an agenda of the guidance documents that we are working on and request your comments on the agenda.
- We notify you when we issue draft guidance documents and request your comments on the drafts.
- We may hold meetings or workshops even before we develop a draft document.

We encourage your involvement in our development of guidance documents. Often, we develop guidance documents based on your suggestions. We solicit your comments on draft guidance documents because our views are not yet finalized and we want your input on the contents of the final guidance.

We understand that you would like to meet with us more regarding the development of guidance documents. Our policies on meeting with the public on guidance development are evolving. In efforts separate from this rulemaking, we are exploring ways to increase this interaction within the confines of applicable statutes and regulations, and

are considering our need to provide all interested parties access to the process, our interest in issuing documents in a timely manner, and our resource constraints. We welcome your suggestions in this area.

(Comment 15) One comment proposed establishing a mechanism in § 10.115(g) whereby companies can fund a market research initiative that would permit us, through questionnaires, focus groups, and other techniques, to obtain input on proposed policies directly from patients, doctors, and other stakeholders.

We welcome input from patients, doctors, and other stakeholders. We believe that the procedures described in § 10.115, especially our increased use of the Internet to disseminate information, provide adequate avenues for patient, doctor, and stakeholder involvement in the development of our policies. We decline at this time to establish a funded market research initiative because administering such a program would divert personnel resources from other public health priorities.

(Comment 16) One comment suggested that we consider interactive techniques, such as town hall meetings, that may encourage industry input on setting priorities for the development of guidance documents listed on the agenda.

We welcome industry input on prioritizing our development of guidance documents. We believe that the procedures described in the GGP's on the guidance document agenda, especially our increased use of the Internet to disseminate the agenda and our request for comments on the agenda, provide adequate avenues for industry and others to assist us in prioritizing guidance documents. Furthermore, the agenda is only one of several mechanisms we use to solicit input on prioritizing the guidance documents we are developing. For example, we may participate in public meetings and public hearings and may raise guidance document issues at advisory committee meetings. At this time, we decline to change the GGP's in the manner suggested but will continue to consider avenues for encouraging input at all stages of guidance development.

(Comment 17) One comment suggested that any proposed guidance documents submitted to advisory committees be made public in a manner that provides sufficient time for review before the meeting.

We agree that proposed guidance documents submitted to advisory committees should be made public as soon as practicable to allow for a review of those materials. We are working to ensure that this information is made available in a timely manner.

5. Legal Effect of Guidance Documents

(Comment 18) We received several comments on the legal effect of guidance documents. A number of comments referred to the statement in the proposed regulation that we are willing to discuss an alternative approach with you to ensure that it complies with the relevant statutes and regulations (§ 10.115(c)(3)). The comments stated that if a guidance document is not binding, the discussion of alternative approaches should not be required.

The comments misinterpreted the intent of the statement in § 10.115(c)(3). If you take an alternative approach, you are not required to discuss that approach with us. Instead, we are offering our assistance to make sure that any alternative approach you take meets the appropriate statutory or regulatory requirements. Discussing alternative approaches may help you understand our interpretation of the applicable statutes and regulations and may further our understanding of the merits of your approach.

(Comment 19) Two comments suggested that compliance with a guidance document should provide a company with a safe harbor from FDA enforcement action. The comments recommended that we change the regulation to require us to amend, or at least publish a proposal to amend, a guidance document before initiating an enforcement action against a company that acted in accordance with a guidance. The comments also noted that if we do not provide a safe harbor from enforcement, at a minimum, a company's action in accordance with a guidance document should be evidence of the company's intent to comply with our regulations.

Section 701(h)(1)(B) of the act provides that guidance documents ''shall not be binding on the Secretary.'' Creating a ''safe harbor'' in a guidance document that would preclude us from taking action would impermissibly bind us. In issuing enforcement-related guidance documents, we express our current thinking regarding regulatory matters and believe this provides useful information. However, you always remain independently responsible for complying with applicable statutes and regulations. Whether you have complied with the law is determined from the facts of each case.

(Comment 20) We received two comments suggesting that we clarify to our staff that FDA may not cite failure to follow a guidance document in any observation on Form FDA 483 (List of Inspectional Observations).

We agree with this comment. Guidance documents are not binding. An enforcement action may be taken only when we find a violation of statutory or regulatory requirements. If a guidance document contains a reference to a regulatory or statutory requirement, then enforcement action may be taken if the regulation or statutory requirement is violated. Of course, enforcement action may be taken if a requirement in a regulation or statute is violated whether or not there is a reference to the requirements in any guidance document. We discuss this issue in the GGP training we provide employees under § 10.115(l)(1).

(Comment 21) We received one comment on how we should interpret a draft guidance document during the time that it is out for comment, before the document has been finalized. The comment suggested that we maintain three categories of guidance documents: Draft, approvable, and approved.

We believe the provisions of § 10.115(g) sufficiently describe both the process for issuing draft Level 1 guidance documents for comment and the process of implementing Level 1 guidance documents without comment when prior public participation is not feasible or appropriate. We do not believe that adding more categories will improve the process; instead, it could confuse the users of the documents. Early in the process of developing the GGP's, comments strongly urged the agency to streamline and simplify the nomenclature for guidance documents. We have done so. If you are concerned about FDA's thinking on an issue that is reflected only in a draft guidance, you should contact the appropriate office within FDA to discuss the issue.

While a draft Level 1 guidance document is out for comment, you may be concerned that the guidance will change based on comments received. Because a guidance document represents the agency's current thinking on a subject but it is not ever binding on FDA or outside parties, you should not rely on any guidance document, draft or final. If you have questions about compliance with statutory or regulatory requirements, you can discuss those issues with an FDA employee.

6. Standard Elements

(Comment 22) We received two comments suggesting that the designation as Level 1 or Level 2 be a standard element of each guidance document.

We believe that the comment misinterpreted the significance of the Level 1 or Level 2 designation. The designation of a guidance as Level 1 or Level 2 is only relevant when a guidance document or revision to a guidance document is being developed. The designation is used to indicate whether the proposed document or revision is significant enough to warrant public comment before implementation. If the Level 1 or Level 2 determination remains with the document as a standard element, it may be confusing. For example, if we make a very minor revision to a guidance document that contains highly significant issues, this revision would warrant a Level 2 determination for the purposes of receiving comments. Affected parties should not assume that the document contains issues that are less significant because of the Level 2 designation, but rather that the change being made is not significant.

(Comment 23) One comment suggested that we require as an element in each guidance document a statement that explains why the document is needed.

Guidance documents should be issued only when a need for guidance exists. In each document, we generally include a background section that states the reason for its issuance. We will continue to do this in the future. However, although we acknowledge the utility of stating the need for each guidance, we do not believe the statement should be required. The advice we provide in a guidance document represents our current thinking, regardless of whether we adequately explain the need for the guidance. Therefore, we decline to make this information a required element in our guidance documents.

(Comment 24) One comment suggested that statements of nonbinding effect be prominently displayed on all guidance documents.

We agree with the comment. It is critical that all parties understand that guidance documents do not bind us or you. We are amending the regulation at § 10.115(i)(1)(iv) to require that a statement of the guidance document's nonbinding effect be displayed on prominently each document. In the future, this statement will be placed immediately below the title of the guidance document on the first page of text and it will be in prominent (e.g., bold or italic) print.

7. Our Procedures

(Comment 25) In the proposed rule, we stated that we would not seek public input prior to implementing a Level 1 guidance document if we determine that prior public participation is not feasible or appropriate (proposed § 10.115(g)(2)). Several comments discussed this exception to the prior public participation requirement. Two comments stated that we should use the exception only in rare and extraordinary circumstances. Other comments suggested that we only use this exception in cases where there is a real, demonstrated public health emergency, not just a theoretical emergency. Another comment stated that when we use these procedures, we should provide a statement of our reasons for not soliciting prior public participation.

Under section 701(h)(1)(C) of the act, we must ensure public participation prior to the implementation of guidance documents unless we determine that such prior public participation is not feasible or appropriate. As discussed in the preamble to the proposed rule, § 10.115(g)(2) reflects the standard stated in the statute (65 FR 7321 at 7324). We anticipate that this exception will generally be used when: (1) There are public health reasons for the immediate implementation of the guidance document; (2) there is a statutory requirement, executive order, or court order that requires immediate implementation; or (3) the guidance document presents a less burdensome policy that is consistent with public health. We agree that we should explain why a document is being issued without prior public participation when we issue the document. Generally, this explanation is included in the NOA for the guidance document. We will continue to follow this procedure in the future.

(Comment 26) One comment suggested that we adopt a 30-day grace period for Level 1 guidance documents issued without prior public participation.

A grace period would not be needed for a guidance document because guidance is not binding on us or you. We do not enforce guidance documents; we enforce applicable statutory and regulatory requirements.

We are committed to ensuring that you have the opportunity to participate in guidance document development as much as possible. Therefore, we will issue a Level 1 guidance document without prior public participation only if it is not feasible or appropriate to solicit your comments (e.g., a public health emergency or a court order requires the issuance of the guidance and we need to make the document available to the public as quickly as possible). A delay in implementation would not be appropriate in such circumstances.

(Comment 27) One comment noted that there are times when a Level 2 guidance document may become controversial and suggested that we adopt procedures whereby a Level 2 document could be withdrawn, redesignated as a Level 1 document, and reissued in draft for public comment.

We believe that the GGP's implicitly provide us with the ability to act as the comment describes. If our initial determination to issue a guidance document or amended guidance document using Level 2 procedures proves to be an incorrect decision because the document is highly controversial when issued, we may withdraw the guidance document and reissue it as a draft guidance document following Level 1 procedures (i.e., publish an NOA in the **Federal Register** for the draft guidance document and solicit comments on the draft). We do not believe the rule should be amended to reflect these procedures.

(Comment 28) Two comments suggested that we use the Internet to the greatest extent possible to disseminate guidance documents. Several comments specifically requested that we allow submission of comments on guidance documents through e-mail.

We use the Internet as our primary means of disseminating guidance documents. In most cases, newly issued or revised guidance documents are available on the Internet at the same time they are available through other means (e.g., through the Dockets Management Branch). We are developing new ways to use Internet technology to enhance our ability to disseminate information to the public. In particular, we are developing a system for providing access to all documents on the Internet and facilitating e-mail submission of comments on guidance documents.

(Comment 29) One comment suggested that we publish a new guidance document within 30 days of changing our current thinking on a given subject. This comment also urged us to amend the regulations to clarify that the information in a guidance document may be relied on to be currently acceptable to FDA.

We agree that guidance documents should reflect our current thinking on a given subject. We try to ensure that our documents are current. However, we allocate our limited resources to the areas of greatest public health need. Although GGP's help to ensure a greater level of public participation in guidance development, following these procedures often means that it takes

longer to issue guidance documents. Therefore, we will not commit ourselves to issuing guidance documents within a specific timeframe. We need flexibility to allocate our resources as we see fit, for example, to an area that presents more significant public health issues.

In response to the second part of the comment, § 10.115(d)(3) of the final rule clearly states that guidance documents represent the agency's current thinking on the subject of the document, and that FDA employees may depart from guidance documents only with appropriate justification and supervisory concurrence.

(Comment 30) One comment stated that if we depart from a guidance document on multiple occasions, we should consider revising the document. A similar comment noted that when a change in policy allows deviation from a guidance document, we should amend the document to indicate the existence of limited exceptions.

As discussed previously, guidance documents should represent our current thinking on the matters discussed in the documents. Our consistent deviation from a guidance document might suggest that we should revise it. Furthermore, we should amend guidance documents to clarify any changes in our interpretation of a guidance document. As resources allow, we will continue to update and revise guidance documents to reflect our current thinking.

(Comment 31) One comment suggested that we provide written justification for deviating from a guidance document.

As discussed in the preamble to the proposed rule (65 FR 7321 at 7327), we agree that our employees should not deviate from guidance without appropriate justification and supervisory concurrence. However, because guidance documents are not legally binding, we do not believe that we should provide written notice stating the reasons for such deviations. If we are asked to explain why we are deviating from a guidance document, we will do so.

(Comment 32) One comment suggested that we consolidate guidance documents addressing identical topics, those covering one topic that applies to several premarketing application types, and those containing identical premarketing application elements for similar product lines. This comment also noted that some currently available guidance documents are obsolete, redundant, or no longer appropriate.

We consolidate similar guidance documents when feasible and appropriate. Our primary concern is to issue documents that represent our current thinking on a particular matter. On balance, the benefit of having consolidated guidance documents is often outweighed by the burden of reissuing the documents. Furthermore, consolidated documents may be too cumbersome to be user-friendly.

We agree that documents that are obsolete, redundant, or no longer appropriate should be revised or withdrawn so they do not create confusion. During the past few years, we have tried to eliminate or revise documents when appropriate, given our resource constraints. We will continue this practice. Section 10.115(f) provides you with an opportunity to suggest documents that should be eliminated or revised.

(Comment 33) One comment noted that we should not use guidance documents as a replacement for notice-and-comment rulemaking.

We agree with this comment and believe that in certain circumstances regulations should be issued, while in other circumstances issuance of a guidance document is more appropriate. We carefully consider whether a document that contains binding requirements should be issued. This decision ultimately determines whether it is more appropriate for us to issue regulations or guidance on a given subject.

(Comment 34) We received several comments on our dispute resolution process. One comment suggested that we establish a systematic review process for external auditors to examine the decisions of our staff and to determine whether the application of a guidance document was appropriate. One comment encouraged us to develop an appeals process to address complaints about our development and use of guidance documents, stating that this appeals process is required by the Modernization Act. Other comments suggested that we describe the normal appeals process for disputes about the content of a guidance document in this final rule.

We appreciate the importance of providing effective mechanisms for dispute resolution and recognize that guidance documents need to be developed, issued, and used in a manner that is consistent with GGP's. However, we believe that an evaluation of our current dispute resolution system by an external auditor is unnecessary. We are required under section 405 of the Modernization Act to ensure that an effective appeals mechanism is in place to address complaints about our development and use of guidance documents. We believe that we have such a mechanism in place.

If you believe that an FDA staff member did not follow the GGP's, including any situation where you believe a staff member treated a guidance document as binding, under § 10.115(o) you can raise the issue with that staff member's supervisor. If the issue cannot be resolved, you can continue raising it through the chain of command. These procedures complement our dispute resolution regulation in § 10.75 (internal review of decisions). You can also use the procedures in § 10.75 to appeal a decision on the GGP's. We are amending the final rule to provide another means for raising an issue about our implementation of the GGP's. Under amended § 10.115(o), you can contact the ombudsman of the center or office with which you have a dispute and seek the ombudsman's assistance in resolving the issue. Finally, if you feel that you are not making progress or if you are unable to resolve the issue at the center or office level, you can request that our Chief Mediator and Ombudsman become involved. Each center and office has made or will make available its own guidance documents on specific procedures for resolving disputes.

You may also petition us under § 10.30 (citizen petitions) and request that we formally resolve your issue.

(Comment 35) One comment suggested that we explicitly state that guidance documents apply to all parties who work in the area addressed by the document. The comment stated that historically, we have not applied guidance documents uniformly to work undertaken by different individuals.

In each document, we generally include an introductory section that states the intended audience of the guidance document (e.g., applicants, reviewers). The guidance document applies to all members of the intended audience. If you believe that an FDA staff member is not interpreting the document appropriately, you can follow the dispute resolution procedures described previously and in § 10.115(o).

(Comment 36) One comment suggested that we post the names and titles of the supervisors for each center/office on our Internet home page (www.fda.gov).

We agree that information about the individuals to contact regarding the resolution of a dispute should be readily available. This information is currently on the Internet for all of the centers and offices. You can find the organizational charts at the following Internet addresses:

TABLE 1.

Center or Office	Organizational Chart Internet address
Center for Biologics Evaluation and Research	www.fda.gov/cber/inside/orgchart.pdf
Center for Devices and Radiological Health	www.fda.gov/cdrh/organiz.html
Center for Drug Evaluation and Research	www.fda.gov/cder/cderorg.htm
Center for Food Safety and Applied Nutrition	vm.cfsan.fda.gov/¢dms/orgchart.html
Center for Veterinary Medicine	www.fda.gov/cvm/fda/mappgs/contactcvm.html
Office of Regulatory Affairs	www.fda.gov/ora/inspect__ref/iom/IOMORADIR.html

(Comment 37) In § 10.115(l)(2), we state that our centers and offices will monitor the development and issuance of guidance documents to ensure that GGP's are being followed. One comment suggested that we consider using a center ombudsman (e.g., the new ombudsman in the Center for Devices and Radiological Health) to perform this monitoring function.

We agree that it is important to ensure that guidance documents are developed and issued consistently by all centers and offices. Therefore, each center and office will designate one or more persons to monitor the development and issuance of its guidance documents. The center or office can designate the ombudsman and/or other individuals to perform this function.

As discussed previously, under § 10.115(o) you may seek the assistance of a center or office ombudsman or the Office of the Chief Mediator and Ombudsman if you believe that someone at FDA is not following the GGP's.

(Comment 38) One comment said that if we are serious about ensuring that our employees do not develop policy through speeches and other informal mechanisms, we should update and enforce internal written procedures on this subject. Another comment suggested that we state that our employees may not make statements at advisory committee meetings as a means to communicate new regulatory expectations.

We stated in the proposed regulation at § 10.115(e) that we may not use documents and other means of communication that are excluded from the definition of guidance document to informally communicate new or different regulatory expectations to the public for the first time. We are maintaining this language in the final rule. Part of our GGP training for employees includes the understanding that policy is not to be communicated initially to a broad audience through speeches. Statements at advisory committee meetings often depend on the context of the statement. If, for example, a marketing application under consideration raises a novel issue, it may be appropriate for an FDA employee to comment on that issue as it relates to a specific application during a public advisory committee meeting. If there are questions raised by an advisory committee member that are not about a specific application, an individual employee can express a view, but this would not reflect official agency policy.

(Comment 39) One comment suggested that we examine our processes for training, evaluation, and related internal guidance to ensure that our directives to staff reinforce the appropriate use of guidance documents.

Section 701(h)(1)(B) of the act requires us to provide training for employees on how to develop and use guidance documents. We train employees about guidance documents in new employee orientation and/or as part of continuing employee education and training programs. Internal procedural documents are examined before they are issued to ensure that they are consistent with our GGP policies.

(Comment 40) Several comments recommended that there be better internal coordination among centers in the development, issuance, and use of guidance documents. In particular, one comment suggested that FDA ensure closer communication among centers, clarify the role of each center in oversight, and communicate clearly the enforcing center's expectation of a firm's responsibility for following a guidance document.

One comment referred to the ''enforcing'' center. We note that guidance is not enforceable. It is not binding on you or us.

In section 123 of the Modernization Act, Congress directed us to minimize differences in the review and approval of products required to have approved biologics license applications under section 351 of the Public Health Service Act (42 U.S.C. 262) and products required to have approved new drug applications under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)). We have made a concerted effort to minimize those differences and otherwise streamline the regulation of products that may involve dual jurisdiction of our centers. As part of this effort, we have issued numerous joint guidance documents.

We also have several checks within the guidance document development process that help to ensure that there is communication among centers on multicenter topics. For example, Level 1 guidance documents that describe new legal interpretations or significant changes in our policy are reviewed by the Office of the Chief Counsel and the Office of Policy before issuance. These offices are aware of cross-cutting issues and can ensure appropriate coordination.

(Comment 41) A comment suggested that we define the minimum levels of approval authority for sign-off on guidance documents.

We understand that having the appropriate level of clearance on guidance documents is important for purposes of quality control and to achieve the greatest level of consistency across the agency. However, we believe that we should maintain flexibility by providing discretion to the various centers and offices to determine their appropriate levels of clearance. Therefore, we decline the suggestion to mandate minimum levels of approval authority for guidance documents.

(Comment 42) One comment suggested that we clarify the status of advisory opinions and determine whether they are guidance documents.

We issue advisory opinions under § 10.85. We anticipate modifying § 10.85 and explaining the effect of § 10.115 on previously issued advisory opinions in a separate rulemaking effort. As such, the comment is outside the scope of this rulemaking.

(Comment 43) Two comments suggested that we clarify the status of guidelines. One recommended that we designate them as Level 1 guidance.

Our ability to issue guidelines was described in § 10.90(b). In the conforming amendments to the proposed rule, we proposed to delete all references to guidelines in § 10.90(b) and replace the provision with the statement that guidance documents will be developed, issued, and used

according to the requirements at § 10.115. On further consideration, we have decided not to include a provision on guidance documents in § 10.90(b) because it is not necessary to state that guidance documents will be regulated under § 10.115. Therefore, we are removing and reserving § 10.90(b).

As described in the preamble to the proposed rule, all guidelines are now treated as guidance documents (65 FR 7321 at 7326). Because we no longer issue guidelines, we need not determine whether they would warrant a Level 1 or Level 2 determination. If any documents previously issued as guidelines are amended, we will follow the same procedures used for amending guidance documents (i.e., we will determine whether modifying the document meets the criteria for a Level 1 or Level 2 change).

(Comment 44) One comment asked whether we ensure that all broadly disseminated letters are posted on the Internet and whether we have procedures in place for quality control of this process.

We currently post all broadly disseminated letters on the Internet, including ''Dear Doctor'' letters, and letters that are broadly circulated but do not provide the agency's current thinking on a regulatory issue. All broadly disseminated letters that fall under the definition of guidance documents are issued under the procedures described in this rule. Each center and office has personnel who determine whether a broadly disseminated letter meets the criteria for a guidance document and should be issued as such.

(Comment 45) One comment asked whether we post on the Internet letters containing information about public health alerts.

In § 10.115(b)(3), we clarify that guidance documents do not include general information documents provided to consumers or health professionals. Public health alerts fall within this category of documents. While public health alerts are not guidance documents, and the comment is beyond the scope of this rulemaking, we do post such information on the Internet, as appropriate.

(Comment 46) One comment questioned whether we have a mechanism in place for receiving and evaluating suggestions for novel or more efficient procedures. The same comment suggested that we create a data base that contains all correspondence issued to a company. The comment also requested that we post on the Internet all of our speeches and the preamble to the September 29, 1978, current good manufacturing practices (CGMP's) regulation.

These comments are beyond the scope of this rulemaking.

B. Guidance Documents Resulting From International Negotiations

In addition to amending the final rule as described previously in response to comments, we are making one revision that will improve our ability to participate in international negotiations on guidance documents. As described in § 10.115(i)(1) and (i)(2), a guidance document must: (1) Include the term ''guidance,'' (2) identify the center(s) or office(s) issuing the document, (3) identify the activity to which and the people to whom the document applies, (4) include a statement of the document's nonbinding effect, (5) include the date of issuance, (6) note if it is a revision to a previously issued guidance, and (7) contain the word ''draft'' if the document is a draft guidance. Furthermore, guidance documents must not include mandatory language such as ''must'' or ''required'' unless we use those words to describe a statutory or regulatory requirement.

In accordance with our mission, we actively participate in international efforts to reduce the burden of regulation, harmonize regulatory requirements, and achieve appropriate reciprocal arrangements (section 903(b)(3) of the act 21 U.S.C. 393(b)(3)). Through these efforts, we frequently negotiate guidance documents with representatives of other countries. For example, our participation in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) has allowed us to work with representatives of regulatory authorities from Europe, Japan, and the United States and experts from the pharmaceutical industry in the three regions to develop numerous guidance documents on the regulation of human drug and biological products.

When draft documents are negotiated with representatives of other countries, we seek public comment on the resulting documents. We believe it is important to publish draft documents for comment at the same time as other countries so we may review the public comments and resume negotiations in a timely manner. However, other countries do not follow our GGP's; therefore internationally negotiated draft documents often do not comply with all of the provisions of § 10.115(i)(1) and (i)(2). For example, documents negotiated through ICH do not include the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research as issuing offices. Differences in language and use of certain terms often result in wording that implies the draft documents establish mandatory requirements. Therefore, to facilitate the development and issuance of draft documents resulting from international negotiations, we have modified the final rule to state that when issuing ''draft'' guidances that are the product of international negotiations, we need not apply the provisions of § 10.115(i)(1) and (i)(2). However, we recognize and the final rule provides that final guidances that are the product of international negotiations must comply with all of the provisions of § 10.115(i). We anticipate that this amendment will provide many advantages, including our ability to: (1) Provide more time for public comment on draft guidance documents that are the result of international negotiations, (2) receive more public comments on these draft documents, (3) negotiate based on issues raised in public comments more effectively, and (4) resume international negotiations in a timely manner.

III. Conforming Amendments

We refer to guidelines issued under former § 10.90(b) throughout our regulations. Because we are revising our administrative regulations by deleting guidelines and adding guidance documents issued under § 10.115, we are making conforming amendments to 21 CFR parts 7, 10, 14, 19, 25, 101, 107, 110, 114, 170, 310, 312, 314, 316, 500, 514, 601, 803, 814, and 860 to reflect our changes. We are also adding § 601.29, Guidance documents, to the biologics regulations, to be consistent with §§ 312.145, 314.445, and 814.20. These conforming amendments will ensure the accuracy and consistency of the regulations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required statement would be required.

V. Analysis of Impact

We have examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and,

when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

We believe that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. This rule does not impose any mandates on State, local, or tribal governments. The rule will not be significant as defined by the Executive Order and will not require further analysis under the Regulatory Flexibility Act. The Unfunded Mandates Reform Act does not require us to prepare a statement of costs and benefits for the rule because the rule in any 1-year expenditure would not exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VI. Paperwork Reduction Act of 1995

This regulation would impose no additional reporting or recordkeeping requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 7

Administrative practice and procedure, Consumer protection, Reporting and recordkeeping requirements.

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 19

Conflict of interests.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 110

Food packaging, Foods.

21 CFR Part 114

Food packaging, Foods, Reporting and recordkeeping requirements.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 316

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCB's).

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedures, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 7, 10, 14, 19, 25, 101, 107, 110, 114, 170, 310, 312, 314, 316, 500, 514, 601, 803, 814, and 860 are amended as follows:

PART 7—ENFORCEMENT POLICY

1. The authority citation for 21 CFR part 7 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 241, 262, 263b–263n, 264.

§ 7.1 [Amended]

2. In § 7.1, remove the word ''guidelines'' and add in its place the word ''guidance''.

Subpart C [Amended]

3. In the heading for subpart C, consisting of §§ 7.40 through 7.59, remove the word ''guidelines'' and add in its place the word ''guidance''.

§ 7.40 [Amended]

4. In 7.40(a), remove the word ''guidelines'' and add in its place the word ''guidance''.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

5. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–

397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.20 [Amended]

6. In § 10.20(j)(1)(v), remove the phrase ''guidelines filed under § 10.90(b)'' and add in its place the words ''guidance documents developed under § 10.115''.

§ 10.45 [Amended]

7. In § 10.45(d), remove the words ''on a guideline issued under § 10.90,''.

§ 10.85 [Amended]

8. In § 10.85, remove paragraph (d)(5).

§ 10.90 [Amended]

9. In § 10.90, remove ''guidelines,'' from the section heading and remove and reserve paragraph (b).

10. Add § 10.115 to subpart B to read as follows:

§ 10.115 Good guidance practices.

(a) *What are good guidance practices*? Good guidance practices (GGP's) are FDA's policies and procedures for developing, issuing, and using guidance documents.

(b) *What is a guidance document*?

(1) Guidance documents are documents prepared for FDA staff, applicants/sponsors, and the public that describe the agency's interpretation of or policy on a regulatory issue.

(2) Guidance documents include, but are not limited to, documents that relate to: The design, production, labeling, promotion, manufacturing, and testing of regulated products; the processing, content, and evaluation or approval of submissions; and inspection and enforcement policies.

(3) Guidance documents do not include: Documents relating to internal FDA procedures, agency reports, general information documents provided to consumers or health professionals, speeches, journal articles and editorials, media interviews, press materials, warning letters, memoranda of understanding, or other communications directed to individual persons or firms.

(c) *What other terms have a special meaning*?

(1) ''Level 1 guidance documents'' include guidance documents that:

(i) Set forth initial interpretations of statutory or regulatory requirements;

(ii) Set forth changes in interpretation or policy that are of more than a minor nature;

(iii) Include complex scientific issues; or

(iv) Cover highly controversial issues.

(2) ''Level 2 guidance documents'' are guidance documents that set forth existing practices or minor changes in interpretation or policy. Level 2 guidance documents include all guidance documents that are not classified as Level 1.

(3) ''You'' refers to all affected parties outside of FDA.

(d) *Are you or FDA required to follow a guidance document*?

(1) No. Guidance documents do not establish legally enforceable rights or responsibilities. They do not legally bind the public or FDA.

(2) You may choose to use an approach other than the one set forth in a guidance document. However, your alternative approach must comply with the relevant statutes and regulations. FDA is willing to discuss an alternative approach with you to ensure that it complies with the relevant statutes and regulations.

(3) Although guidance documents do not legally bind FDA, they represent the agency's current thinking. Therefore, FDA employees may depart from guidance documents only with appropriate justification and supervisory concurrence.

(e) *Can FDA use means other than a guidance document to communicate new agency policy or a new regulatory approach to a broad public audience*? The agency may not use documents or other means of communication that are excluded from the definition of guidance document to informally communicate new or different regulatory expectations to a broad public audience for the first time. These GGP's must be followed whenever regulatory expectations that are not readily apparent from the statute or regulations are first communicated to a broad public audience.

(f) *How can you participate in the development and issuance of guidance documents*?

(1) You can provide input on guidance documents that FDA is developing under the procedures described in paragraph (g) of this section.

(2) You can suggest areas for guidance document development. Your suggestions should address why a guidance document is necessary.

(3) You can submit drafts of proposed guidance documents for FDA to consider. When you do so, you should mark the document ''Guidance Document Submission'' and submit it to Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(4) You can, at any time, suggest that FDA revise or withdraw an already existing guidance document. Your suggestion should address why the guidance document should be revised or withdrawn and, if applicable, how it should be revised.

(5) Once a year, FDA will publish, both in the **Federal Register** and on the Internet, a list of possible topics for future guidance document development or revision during the next year. You can comment on this list (e.g., by suggesting alternatives or making recommendations on the topics that FDA is considering).

(6) To participate in the development and issuance of guidance documents through one of the mechanisms described in paragraphs (f)(1), (f)(2), or (f)(4) of this section, you should contact the center or office that is responsible for the regulatory activity covered by the guidance document.

(7) If FDA agrees to draft or revise a guidance document, under a suggestion made under paragraphs (f)(1), (f)(2), (f)(3) or (f)(4) of this section, you can participate in the development of that guidance document under the procedures described in paragraph (g) of this section.

(g) *What are FDA's procedures for developing and issuing guidance documents*?

(1) FDA's procedures for the development and issuance of Level 1 guidance documents are as follows:

(i) Before FDA prepares a draft of a Level 1 guidance document, FDA can seek or accept early input from individuals or groups outside the agency. For example, FDA can do this by participating in or holding public meetings and workshops.

(ii) After FDA prepares a draft of a Level 1 guidance document, FDA will:

(A) Publish a notice in the **Federal Register** announcing that the draft guidance document is available;

(B) Post the draft guidance document on the Internet and make it available in hard copy; and

(C) Invite your comment on the draft guidance document. Paragraph (h) of this section tells you how to submit your comments.

(iii) After FDA prepares a draft of a Level 1 guidance document, FDA also can:

(A) Hold public meetings or workshops; or

(B) Present the draft guidance document to an advisory committee for review.

(iv) After providing an opportunity for public comment on a Level 1 guidance document, FDA will:

(A) Review any comments received and prepare the final version of the guidance document that incorporates suggested changes, when appropriate;

(B) Publish a notice in the **Federal Register** announcing that the guidance document is available;

(C) Post the guidance document on the Internet and make it available in hard copy; and

(D) Implement the guidance document.

(v) After providing an opportunity for comment, FDA may decide that it should issue another draft of the guidance document. In this case, FDA will follow the steps in paragraphs (g)(1)(ii), (g)(1)(iii), and (g)(1)(iv) of this section.

(2) FDA will not seek your comment before it implements a Level 1 guidance document if the agency determines that prior public participation is not feasible or appropriate.

(3) FDA will use the following procedures for developing and issuing Level 1 guidance documents under the circumstances described in paragraph (g)(2) of this section:

(i) After FDA prepares a guidance document, FDA will:

(A) Publish a notice in the **Federal Register** announcing that the guidance document is available;

(B) Post the guidance document on the Internet and make it available in hard copy;

(C) Immediately implement the guidance document; and

(D) Invite your comment when it issues or publishes the guidance document. Paragraph (h) of this section tells you how to submit your comments.

(ii) If FDA receives comments on the guidance document, FDA will review those comments and revise the guidance document when appropriate.

(4) FDA will use the following procedures for developing and issuing Level 2 guidance documents:

(i) After it prepares a guidance document, FDA will:

(A) Post the guidance document on the Internet and make it available in hard copy;

(B) Immediately implement the guidance document, unless FDA indicates otherwise when the document is made available; and

(C) Invite your comment on the Level 2 guidance document. Paragraph (h) of this section tells you how to submit your comments.

(ii) If FDA receives comments on the guidance document, FDA will review those comments and revise the document when appropriate. If a version is revised, the new version will be placed on the Internet.

(5) You can comment on any guidance document at any time. Paragraph (h) of this section tells you how to submit your comments. FDA will revise guidance documents in response to your comments when appropriate.

(h) *How should you submit comments on a guidance document*?

(1) If you choose to submit comments on any guidance document under paragraph (g) of this section, you must send them to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(2) Comments should identify the docket number on the guidance document, if such a docket number exists. For documents without a docket number, the title of the guidance document should be included.

(3) Comments will be available to the public in accordance with FDA's regulations on submission of documents to the Dockets Management Branch specified in § 10.20(j).

(i) *What standard elements must FDA include in a guidance document*?

(1) A guidance document must:

(i) Include the term ''guidance,''

(ii) Identify the center(s) or office(s) issuing the document,

(iii) Identify the activity to which and the people to whom the document applies,

(iv) Prominently display a statement of the document's nonbinding effect,

(v) Include the date of issuance,

(vi) Note if it is a revision to a previously issued guidance and identify the document that it replaces, and

(vii) Contain the word ''draft'' if the document is a draft guidance.

(2) Guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

(3) When issuing draft guidance documents that are the product of international negotiations (e.g., guidances resulting from the International Conference on Harmonisation), FDA need not apply paragraphs (i)(1) and (i)(2) of this section. However, any final guidance document issued according to this provision must contain the elements in paragraphs (i)(1) and (i)(2) of this section.

(j) *Who, within FDA, can approve issuance of guidance documents*? Each center and office must have written procedures for the approval of guidance documents. Those procedures must ensure that issuance of all documents is approved by appropriate senior FDA officials.

(k) *How will FDA review and revise existing guidance documents*?

(1) The agency will periodically review existing guidance documents to determine whether they need to be changed or withdrawn.

(2) When significant changes are made to the statute or regulations, the agency will review and, if appropriate, revise guidance documents relating to that changed statute or regulation.

(3) As discussed in paragraph (f)(3) of this section, you may at any time suggest that FDA revise a guidance document.

(l) *How will FDA ensure that FDA staff are following GGP's*?

(1) All current and new FDA employees involved in the development, issuance, or application of guidance documents will be trained regarding the agency's GGP's.

(2) FDA centers and offices will monitor the development and issuance of guidance documents to ensure that GGP's are being followed.

(m) *How can you get copies of FDA's guidance documents*? FDA will make copies available in hard copy and, as feasible, through the Internet.

(n) *How will FDA keep you informed of the guidance documents that are available*?

(1) FDA will maintain on the Internet a current list of all guidance documents. New documents will be added to this list within 30 days of issuance.

(2) Once a year, FDA will publish in the **Federal Register** its comprehensive list of guidance documents. The comprehensive list will identify documents that have been added to the list or withdrawn from the list since the previous comprehensive list.

(3) FDA's guidance document lists will include the name of the guidance document, issuance and revision dates, and information on how to obtain copies of the document.

(o) What can you do if you believe that someone at FDA is not following these GGP's? If you believe that someone at FDA did not follow the procedures in this section or that someone at FDA treated a guidance document as a binding requirement, you should contact that person's supervisor in the center or office that issued the guidance document. If the issue cannot be resolved, you should contact the next highest supervisor. You can also contact the center or office ombudsman for assistance in resolving the issue. If you are unable to resolve the issue at the center or office level or if you feel that you are not making progress by going through the chain of command, you may ask the Office of the Chief Mediator and Ombudsman to become involved.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

11. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 14.27 [Amended]

12. In § 14.27(b)(3), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

§ 14.33 [Amended]

13. In § 14.33(c), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

14. The authority citation for 21 CFR part 19 continues to read as follows:

Authority: 21 U.S.C. 371.

§ 19.10 [Amended]

15. In § 19.10(c), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

16. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

§ 25.30 [Amended]

17. In § 25.30(h), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

PART 101—FOOD LABELING

18. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

§ 101.9 [Amended]

19. In § 101.9(b)(7)(vi), remove the word ''guideline'' wherever it appears and add in its place the words ''guidance document''.

PART 107—INFANT FORMULA

20. The authority citation for 21 CFR part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

§ 107.270 [Amended]

21. In § 107.270, remove the word ''guidelines'' and add in its place the word ''guidance''.

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

22. The authority citation for 21 CFR part 110 continues to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

§ 110.80 [Amended]

23. In § 110.80, remove the word ''guidelines,'' in paragraphs (a)(3) and (a)(4).

PART 114—ACIDIFIED FOODS

24. The authority citation for 21 CFR part 114 continues to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

§ 114.100 [Amended]

25. In § 114.100(a), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

PART 170—FOOD ADDITIVES

26. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

§ 170.39 [Amended]

27. In § 170.39(h), remove the word ''guidelines'' wherever it appears and add in its place the words ''guidance documents''.

PART 310—NEW DRUGS

28. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379(e); 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

§ 310.500 [Amended]

29. In § 310.500(e), remove the words ''guidelines'' and ''guideline'', respectively, and add in their place the words ''guidance'' and ''guidance on'', respectively.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

30. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 312.23 [Amended]

31. In § 312.23(a)(8), remove the word ''guidelines'' and add in its place the words ''guidance documents.''

32. Revise § 312.145 to read as follows:

§ 312.145 Guidance documents.

(a) FDA has made available guidance documents under § 10.115 of this chapter to help you to comply with certain requirements of this part.

(b) The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) maintain lists of guidance documents that apply to the centers' regulations. The lists are maintained on the Internet and are published annually in the **Federal Register**. A request for a copy of the CDER list should be directed to the Office of Training and Communications, Division of Communications Management, Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. A request for a copy of the CBER list should be directed to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

33. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

§ 314.50 [Amended]

34. In § 314.50, in the introductory text remove the word ''guidelines'' and add in its place the words ''guidance documents''.

§ 314.70 [Amended]

35. In § 314.70(a), remove the words ''guideline, notice,'' and add in their place the word ''notice''.

§ 314.94 [Amended]

36. In § 314.94, in the introductory text remove the words ''guidelines'' and add in its place the words ''guidance documents''.

§ 314.105 [Amended]

37. In § 314.105(c), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

§ 314.420 [Amended]

38. In § 314.420(c), remove the words ''under § 10.90(b) a guideline'' and add in their place the word ''guidance''.

39. Revise § 314.445 to read as follows:

§ 314.445 Guidance documents.

(a) FDA has made available guidance documents under § 10.115 of this chapter to help you to comply with certain requirements of this part.

(b) The Center for Drug Evaluation and Research (CDER) maintains a list of guidance documents that apply to CDER's regulations. The list is maintained on the Internet and is published annually in the **Federal Register**. A request for a copy of the CDER list should be directed to the Office of Training and Communications, Division of Communications Management, Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

PART 316—ORPHAN DRUGS

40. The authority citation for 21 CFR part 316 continues to read as follows:

Authority: 21 U.S.C. 360aa, 360bb, 360cc, 360dd, 371.

41. Revise § 316.50 to read as follows:

§ 316.50 Guidance documents.

FDA's Office of Orphan Products Development will maintain and make publicly available a list of guidance documents that apply to the regulations in this part. The list is maintained on the Internet and is published annually in the **Federal Register**. A request for a copy of the list should be directed to the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

PART 500—GENERAL

42. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

§ 500.80 [Amended]

43. In § 500.80(a), remove the word ''guidelines'' wherever it appears and add in its place the words ''guidance documents''.

PART 514—NEW ANIMAL DRUG APPLICATIONS

44. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

§ 514.1 [Amended]

45. In § 514.1(d)(2), remove the word ''guidelines'' wherever it appears and add in its place the words ''guidance documents''.

PART 601—LICENSING

46. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

47. Add § 601.29 to subpart C to read as follows:

§ 601.29 Guidance documents.

(a) FDA has made available guidance documents under § 10.115 of this chapter to help you comply with certain requirements of this part.

(b) The Center for Biologics Evaluation and Research (CBER) maintains a list of guidance documents that apply to the center's regulations. The lists are maintained on the Internet and are published annually in the **Federal Register**. You may request a copy of the CBER list from the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448.

PART 803—MEDICAL DEVICE REPORTING

48. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

§ 803.14 [Amended]

49. In § 803.14(b), remove the word ''guidelines'' and add in its place the words ''guidance documents''.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

50. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

51. In § 814.20, revise paragraph (g) to read as follows:

§ 814.20 Application.

* * * * *

(g) FDA has issued a PMA guidance document to assist the applicant in the arrangement and content of a PMA. This guidance document is available on the Internet at http://www.fda.gov/cdrh/dsma/pmaman/front.html. This guidance document is also available upon request from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, FAX 301–443–8818.

* * * * *

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

52. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

§ 860.3 [Amended]

53. In § 860.3(c)(2), remove the words ''guidelines'' and ''guidelines for'' and add in their place the words ''guidance documents'' and ''guidance on'', respectively.

Dated: September 1, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–23887 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 203 and 205

[Docket No. 92N–0297]

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administration Procedures; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to discuss certain requirements of the final rule implementing the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA) and the FDA Modernization Act of 1997 (Modernization Act), which published in the **Federal Register** of December 3, 1999 (64 FR 67720), (hereinafter referred to as the PDMA final rule). The purpose of the hearing is to elicit comment from interested persons, including professional groups and associations, the regulated industry, health care professionals, and consumers, on the potential impact of certain requirements in the PDMA final rule relating to wholesale distribution of prescription drugs by distributors that are not authorized distributors of record, and distribution of blood derivatives by

entities that meet the definition of a ''health care entity'' in the PDMA final rule. The agency will use information obtained from the hearing and the comments to this document to determine what steps, if any, should be taken to modify the requirements in the PDMA final rule.

DATES: The public hearing will be held on Friday, October 27, 2000, from 8:30 a.m. to 4:30 p.m. Submit written notices of participation and comments for consideration at the hearing to the docket number listed in the heading of this document by October 13, 2000.[1] Written comments will be accepted after the hearing until November 20, 2000.

ADDRESSES: The public hearing will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852. Submit written notices of participation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should also be submitted to the Dockets Management Branch (address above). Transcripts of the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Anne M. Henig, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5410.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory Requirements for Distribution of Prescription Drugs by Unauthorized Distributors

PDMA, as amended by the PDA, amended sections 301, 303, 503, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, 333, 353, 381) to, among other things, establish requirements for the wholesale distribution of prescription drugs; and to prohibit, with certain exceptions, the sale or offer to sell prescription drugs that have been purchased by a hospital or other health care entity or that have been donated or supplied at a reduced price to a charitable organization.

Section 503(e)(1)(A) of the act states that each person who is engaged in the wholesale distribution of a prescription drug who is not the manufacturer or an authorized distributor of record for the drug must, before each wholesale distribution of a drug, provide to the person receiving the drug a statement, also known as a drug ''pedigree,'' (in such form and containing such information as the Secretary may require) identifying each prior sale, purchase, or trade of the drug, including the date of the transaction and the names and addresses of all parties to the transaction. Section 503(e)(4)(A) of the act states that, for the purposes of section 503(e), the term ''authorized distributors of record'' means those distributors with whom a manufacturer has established an ''ongoing relationship'' to distribute the manufacturer's products.

In the PDMA final rule, the agency published regulations in part 203 (21 CFR part 203) implementing these and other provisions of PDMA. Section 203.50 implements section 503(e)(1)(A) of the act and requires that, before the completion of any wholesale distribution by a wholesale distributor of a prescription drug for which the seller is not an authorized distributor of record to another wholesale distributor or retail pharmacy, the seller must provide to the purchaser a statement identifying each prior sale, purchase, or trade of the drug. The identifying statement must include the proprietary and established name of the drug, its dosage, the container size, the number of containers, lot or control numbers of the drug being distributed, the business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer, and the date of each previous transaction. Section 203.3(b) defines ''authorized distributor of record'' as a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products. ''Ongoing relationship'' is defined in § 203.3(u) to mean an association that exists when a manufacturer and a distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute a manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Thus, the PDMA final rule requires unauthorized distributors (i.e., those distributors who do not have a written authorization agreement) to provide a drug statement, or pedigree, to purchasers showing the entire prior sales history of the drug back to the first sale by the manufacturer. As discussed in the preamble to the PDMA final rule (64 FR 67720 at 67747), manufacturers and authorized distributors of record are not required to provide an identifying statement when selling a drug, although the agency encouraged them to do so voluntarily to permit unauthorized distributors to continue to be able to purchase products from them.[2]

The provisions in the PDMA final rule related to wholesale distribution of prescription drugs by unauthorized distributors (i.e., §§ 203.3(u) and 203.50) were adopted from the provisions in the proposed rule published in the **Federal Register** of March 14, 1994 (59 FR 11842), and are essentially the same as the proposed provisions, except the definition for ''ongoing relationship'' in the proposed rule was revised to eliminate certain requirements.[3] The agency received two comments on the proposed definition of ongoing relationship and one comment on proposed § 203.50, and responded in detail to those comments in the preamble to the PDMA final rule (see 64 FR 67720 at 67727, 67728, and 67747).

B. Legislative and Regulatory Requirements Restricting Distribution of Blood Derived Prescription Drug Products by Health Care Entities

Section 503(c)(3)(A) of the act states that no person may sell, purchase, or trade, or offer to sell, purchase, or trade, any prescription drug that was purchased by a public or private hospital or other health care entity. Section 503(c)(3)(B) of the act states several exceptions to section 503(c)(3)(A), none of which are relevant to this discussion. Section 503(c)(3) of the act also states that ''[f]or purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law * * *.''

Sections 203.20 of the PDMA final rule provides, with certain exceptions, that no person may sell, purchase, or trade, or offer to sell, purchase, or trade any prescription drug that was purchased by a public or private hospital or other health care entity or donated or supplied at a reduced price to a charitable institution. In § 203.3(q)

[1] Until recently, two dockets were being used to receive comments on issues related to PDMA. One docket, the docket established in 1988, will no longer be used. For simplicity, all comments related to any issues involving PDMA should be forwarded to the docket listed in the heading of this document.

[2] An unauthorized wholesale distributor that purchases a product from a manufacturer or authorized distributor of record without an identifying statement showing the prior sales of the drug could not provide an identifying statement to its purchasers and, therefore, could not conduct further wholesale transactions of the drug in compliance with § 203.50.

[3] The proposed rule defined ''ongoing relationship'' to require a written agreement and, in addition, the following two requirements that were eliminated in the final rule: (1) That a sale be completed under the written agreement and (2) that the distributor be listed on the manufacturer's list of authorized distributors.

of the PDMA final rule, ''Health care entity'' is defined as meaning any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or wholesale distributor. Under both the act and the PDMA final rule, a person could not simultaneously be a health care entity and a retail pharmacy or wholesale distributor. Thus, under the PDMA final rule, blood centers functioning as health care entities could not engage in wholesale distribution of prescription drugs, except for blood and blood components intended for transfusion, which are exempt from PDMA under § 203.1 of the PDMA final rule. Blood and blood components include whole blood, red blood cells, platelets, and cryoprecipitated antihemophilic factor, which are prepared by blood banks who collect blood from donors and separate out the components using physical or mechanical means. Blood derivatives are derived from human blood, plasma, or serum through a chemical fractionation manufacturing process. Examples of blood derivative products include albumin, antihemophilic factor, immune globulin, and alpha-1 anti-tripsin. As discussed in the preamble to the PDMA final rule in response to comments (64 FR 67720 at 67725 through 67727), blood derivative products are not blood or blood components intended for transfusion and therefore could not be distributed by health care entities, including full service blood centers that function as health care entities, after the final rule goes into effect. The agency received several comments on the proposed rule objecting to the applicability of the sales restrictions to the sale of blood derivatives by blood centers that function as health care entities, and responded in detail to those comments (see 64 FR 67720 at 67726).

C. Events Leading to the Delay of the Effective Date; Need for the Public Hearing

After publication of the PDMA final rule, the agency received letters and petitions and had other communications with industry, industry trade associations, and members of Congress objecting to the provisions in §§ 203.3(u) and 203.50. On March 29, 2000,[4] the agency met with representatives from the wholesale drug industry and industry associations. The meeting participants discussed their concerns with both: (1) The requirement in § 203.3(u) that there be a written authorization agreement between a manufacturer and distributor for the distributor to be considered an authorized distributor of record under § 203.3(b), and (2) the requirement in § 203.50 that unauthorized distributors provide a pedigree showing all prior sales going back to the manufacturer.

The meeting participants asserted that manufacturers are unwilling to enter into written authorization agreements with the majority of smaller wholesalers. As a result, these wholesalers cannot become authorized distributors of record for the drugs they sell. The meeting participants also said that smaller wholesalers cannot obtain the required pedigree showing all prior sales of the drugs they purchase for sale because a large portion of these drugs are purchased from authorized distributors who are not required to provide a pedigree and who are unwilling to voluntarily provide them. The meeting participants asserted that authorized distributors will not voluntarily provide pedigrees when they sell drugs to unauthorized distributors because it would require them to change their warehouse and business procedures, which would entail additional effort and expense.

The meeting participants asserted that implementation of the PDMA final rule will prevent over 4,000 smaller, unauthorized distributors from distributing drugs to their customers and may put them out of business, at least with respect to their prescription drug wholesale business. They also asserted that because many of their customers are smaller retail outlets that are not served by larger distributors, implementation of the PDMA final rule may leave certain markets for prescription drugs, and ultimately consumers for prescription drugs, underserved.

In addition to the meeting discussed above and other informal communications that FDA has had with industry, industry associations, and Congress, FDA received a petition for stay of action requesting that the relevant provisions of the PDMA final rule be stayed until October 1, 2001. That petition was supported by numerous letters submitted to the docket from entities that would be considered unauthorized distributors under the PDMA final rule. The agency also received a petition for reconsideration from the Small Business Administration (SBA) requesting that FDA reconsider the PDMA final rule and suspend its effective date based on the projected severe economic impact it would have on over 4,000 small businesses. The petitions argued that the requirement for a written agreement in § 203.3(u) is unreasonable because manufacturers are not willing to enter into such agreements with the majority of smaller distributors. The petitions also asserted that authorized wholesalers are not now able and could not provide, at a reasonable cost, a pedigree to their unauthorized distributor customers that meets the requirements of § 203.50 of the PDMA final rule. The SBA petition asserted that, if the effective date of the PDMA final rule is not stayed, drug products now in the inventory of wholesalers will have to be cleared and new orders will have to cease or be severely limited to comply with the PDMA final rule's December 4, 2000, effective date, with corresponding disruptions in the distribution of drugs possible by summer 2000.

In addition to the submissions on wholesale distribution by unauthorized distributors, the agency has received several letters on, and has held several meetings to discuss, the implications of the final regulations on blood centers that distribute blood derivative products and provide health care as a service to the hospitals and patients they serve. The blood center industry asserts that the regulations and, particularly the definition of ''health care entity,'' will severely inhibit their ability to provide full service care to the detriment of client hospitals and the patients they serve, and may disrupt the distribution of these products to the public. The agency also received a letter from Congress on this issue.

Based on the concerns expressed by industry, industry associations, and Congress about implementing §§ 203.3(u) and 203.50 by the December 4, 2000, effective date, the agency published a document in the **Federal Register** of May 3, 2000 (65 FR 25639), delaying the effective date for those provisions until October 1, 2001 (the May 2000 document). In addition, the May 2000 document delayed the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities until October 1, 2001. The May 2000 document also reopened the administrative record and gave interested persons until July 3, 2000, to submit written comments. As stated in the May 2000 document, the purpose of delaying the effective date for these provisions was to give the agency time to obtain more information about the possible consequences of implementing them and to further evaluate the issues involved.

[4] In a document published in the **Federal Register** of May 3, 2000 (65 FR 25639 at 25640), the agency incorrectly stated that this meeting occurred in early February 2000.

On May 16, 2000, the House Committee on Appropriations (the Committee) stated in its report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2001 (report 106–619) that it supported the ''recent FDA action to delay the effective date for implementing certain requirements of the Prescription Drug Marketing Act until October 1, 2001 and reopen the administrative record in order to receive additional comments.'' In addition, the Committee stated that it ''believes the agency should thoroughly review the potential impact of the proposed provisions on the secondary wholesale pharmaceutical industry.'' The Committee directed the agency to provide a report to the Committee by January 15, 2001, summarizing the comments and issues raised and agency plans to address the concerns.

In light of the complexity of the issues involved and the potentially serious economic and public health consequences that implementation of the relevant provisions of the PDMA final rule may have, the agency believes that it is appropriate to hold a public meeting to solicit information from, and the views of, interested persons, including professional groups and associations, the regulated industry, health care professionals, and consumers. This will help to develop an adequate factual basis that the agency can use to determine whether it is in the public health interest to take steps to modify or change the requirements in the PDMA final rule.

II. Scope of the Hearing

The PDMA final rule provisions discussed in this document raise many complex economic and public health issues. To promote a more useful discussion at the public hearing, FDA has developed the following list of questions, which are of specific interest. This list is not intended to be exclusive, and presentations and comments answering other questions or addressing other issues, to the extent that they are pertinent to the PDMA final rule provisions discussed in this document, are encouraged.

A. Questions on Distribution of Prescription Drugs by Unauthorized Distributors

1. How does the PDMA final rule, as published, affect the ability of unauthorized distributors to engage in drug distribution, i.e., what specific requirements would be difficult or impossible for unauthorized distributors to meet? Why?

2. If the PDMA final rule diminished the ability of unauthorized distributors to engage in drug distribution, what effect would this have on the drug distribution system? What, if any, adverse public health consequences would result? What would be the economic costs to manufacturers, distributors (authorized and unauthorized), and consumers of drugs?

3. If the act were amended by Congress to delete the requirement for provision of a drug pedigree by unauthorized distributors, would there be an increased risk of distribution of counterfeit, expired, adulterated, misbranded, or otherwise unsuitable drugs to consumers and patients?

4. If the act were amended by Congress to require authorized distributors to provide a pedigree, what types of additional costs and burdens would they incur?

5. Could specific changes be made to the information that is required under § 203.50 to appear on a pedigree to make it more practical, from an authorized distributor's standpoint, to voluntarily provide a pedigree? Would use of a standardized government form be helpful?

6. If actual sales by a manufacturer to a distributor were used by FDA as the only criterion to determine whether an ongoing relationship exists between them (and as a result, whether the distributor is an authorized distributor of record), would it result in more distributors being authorized than if a written authorization agreement is required? What other types of criteria might be used by FDA to make this determination?

B. Questions on Distribution of Blood Derivatives by Blood Banks and Other Health Care Entities

1. What distribution systems are available for blood derived products? Do these distribution systems differ from those for other types of prescription drugs? If so, how?

2. What effect would the PDMA final rule, as published, have on the distribution system for blood derived products? What, if any, adverse public health consequences would result? What would be the economic costs to manufacturers, distributors, and consumers of blood derived products?

3. If blood derived products were excluded from the sales restrictions (i.e., if such products were permitted to be sold by health care entities), would there be an increased risk of distribution of counterfeit, expired, adulterated, misbranded, or otherwise unsuitable blood derived products to consumers and patients? Why or why not?

4. Do manufacturers of blood derived products provide these products to health care entities, particularly those that are also charitable organizations, at a lower price when compared to other customers? Do manufacturers sell these products to charitable or for profit health care entities with the understanding that the products will be used for patients of the purchasing health care entity and will not be resold to other health care entities, distributors, or retail pharmacies?

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or her designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written notice of participation with the Dockets Management Branch (address above) prior to October 13, 2000. To ensure timely handling, any outer envelope should be clearly marked with the Docket No. 92N–0297 and the statement ''FDA PDMA Hearing.'' Groups should submit two copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; brief summary of the presentation; and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation in advance to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under Docket No. 92N–0297.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available on the Internet at http://www.fda.gov/ohrms/dockets and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this document acts as a waiver of those provisions as specified in § 15.30(h).

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written notices of participation and comments for consideration at the hearing by October 13, 2000. To permit time after the hearing for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until November 20, 2000. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by November 20, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 12, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–24008 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 8892]

RIN 1545–AR97

TeleFile Voice Signature Test; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to removal of temporary regulations.

SUMMARY: This document contains corrections to a removal of temporary regulations that provides that an individual Federal income tax return completed as part of the Telefile Voice Signature test will be treated as a return that is signed, authenticated, verified and filed by the taxpayer. This document was published in the **Federal Register** on July 18, 2000 (65 FR 44437).

DATES: This correction is effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the removal of temporary regulations (TD 8892) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the removal of temporary regulations (TD 8892), which is the subject of FR Doc. 00–18116, is corrected as follows:

1. On page 44438, column 1, in amendatory instruction **Par. 6.**, line 1, the language, ''**Par. 6.** Section 602.101(c) is amended'' is corrected to read ''**Par. 6.** Section 602.101(b) is amended''.

§ 602.101 [Corrected]

2. On page 44438, column 1, the paragraph designation § 602.101(c) is correctly designated § 602.101(b).

Cynthia Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–23918 Filed 9–18–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2000–7757]

Safety Zones, Security Zones, Drawbridges and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between April 1, 2000 and June 30, 2000 which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between April 1, 2000 and June 30, 2000.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Bruce Walker, Office of Regulations and Administrative Law, telephone (202) 267-6233. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation (202) 866-9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port

(COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense to the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, drawbridge regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 2000 and June 30, 2000, unless otherwise indicated.

Dated: September 12, 2000.

Christena G. Green,

Acting Chief, Office of Regulations and Administrative Law.

DISTRICT QUARTERLY REPORT

District docket	Location	Type	Effective date
01–00–125	Newton Creek, New York	Safety Zone	05/28/2000
01–00–131	Eastern Promenade, Portland ME	Safety Zone	05/08/2000
01–00–136	Hempstead Harbor, NY	Safety Zone	05/27/2000
01–00–139	Shinnecock Bay, Southampton, NY	Safety Zone	06/30/2000
01–00–148	Hull Chamber of Commerce Fireworks, Hull, MA	Safety Zone	06/03/2000
01–00–150	U.S.S. Maine Transit of the Piscataqua River	Safety Zone	06/08/2000
01–00–155	St. Peter's Fiesta Fireworks, Gloucester, MA	Safety Zone	06/25/2000
05–00–012	Eastern Chesapeake Bay, Wye River, MD	Security Zone	04/26/2000
05–00–023	U.S. Marine Corps Base, Camp Lejeune, NC	Safety Zone	06/12/2000
05–00–024	Chesapeake Bay Cape Henry, Virginia Beach, VA	Security Zone	06/22/2000
07–00–010	Miami Beach, FL	Special Local	04/30/2000
07–00–028	Fort Lauderdale, Broward County, FL	Drawbridge Operation	05/06/2000
07–00–034	Charlotte Amalie Harbor, St. Thomas USVI	Special Local Regs	04/12/2000
07–00–039	Caneel Bay, Saint John, USVI	Special Local	04/27/2000
07–00–042	Charlotte Amalie Harbor, Saint Thomas, USVI	Special Local	04/30/2000
09–00–003	Chicago Harbor, IL	Safety Zone	04/30/2000
09–00–005	Heritage Landing, Muskegon, MI	Safety Zone	05/13/2000
09–00–006	Lake Michigan, Holland, MI	Safety Zone	05/06/2000
09–00–009	Chicago, IL	Safety Zone	05/20/2000
09–00–012	Monroe St. Harbor, Lake Michigan, Chicago, IL	Safety Zone	05/27/2000
09–00–017	Black River South Heaven Michigan	Safety Zone	06/17/2000
09–00–038	Lake Macatawa Holland, Michigan	Safety Zone	06/17/2000
09–00–039	Hammond Marina, Hammond, IA	Safety Zone	06/24/2000
13–00–003	Willamette River, Portland, OR	Safety Zone	05/05/2000
13–00–004	Lake Washington, Renton, WA	Safety Zone	05/13/2000
13–00–005	Elliott Bay, WA	Safety Zone	05/13/2000
13–00–006	Willamette River, Portland, OR	Safety Zone	06/01/2000
13–00–007	Willamette River, Portland, OR	Safety Zone	06/02/2000
13–00–009	Lake Washington, WA	Safety Zone	06/14/2000

COTP QUARTERLY REPORT

COTP Docket	Location	Type	Effective date
Corpus Christi 00–001	Corpus Christi Ship Channel	Safety Zone	06/10/2000
Guam 00–026	Apra Harbor, Guam	Safety Zone	06/21/2000
Houston-Galveston MSU 00–004	Galveston Bay	Safety Zone	04/16/2000
Houston-Galveston MSU 00–005	Offatts Bayou	Safety Zone	04/29/2000
Houston-Galveston MSU 00–006	Deepwater Millenium, Freeport Channel	Safety Zone	05/28/2000
Houston-Galveston MSU 00–007	Deepwater Nautilus, Galveston Channel	Safety Zone	06/07/2000
Huntiong 00–003	Muskigum River, M. 0 to 3	Safety Zone	04/27/2000
Jacksonville 00–040	Indian River, Titusville, FL	Safety Zone	04/29/2000
Jacksonville 00–041	Matanzas River, St. Augustine, FL	Safety Zone	04/30/2000
Jacksonville 00–055	St. Johns River, Green Cove Spring, FL	Safety Zone	05/29/2000
LA/LB 00–003	Middle Harbor-San Pedro Bay, CA	Safety Zone	05/05/2000
LA/LB 00–004	Pierpont Bay, Ventura, CA	Safety Zone	06/04/2000

COTP QUARTERLY REPORT—Continued

COTP Docket	Location	Type	Effective date
New Orleans 00–007	LWR Mississippi River, M. 94 to 96	Safety Zone	04/15/2000
New Oreans 00–008	Red River, M. 58.5 to 60.5	Safety Zone	04/25/2000
New Orleans 00–009	LWR Mississippi River, M. 94 to 96	Safety Zone	05/07/2000
New Orleans 00–010	LWR Mississippi River, M. 92 to 96	Safety Zone	05/20/2000
New Orleans 00–011	Red River, M. 58.5 to 60.5	Safety Zone	05/20/2000
New Orleans 00–012	Red River, M. 58.5 to 60.5	Safety Zone	05/21/2000
New Orleans 00–018	Inner Harbor Navigation Canal	Safety Zone	06/26/2000
Port Arthur 00–001	Neches River Festival, Beaumont TX	Safety Zone	04/29/2000
San Diego 00–001	Colorado River	Safety Zone	04/03/2000
San Diego 00–002	Lake Moovalya, Colorado River, Parker, AZ	Safety Zone	06/01/2000
San Diego 00–003	Colorado River, AZ	Safety Zone	04/16/2000
San Diego 00–004	San Diego Bay, San Diego, CA	Safety Zone	05/06/2000
San Diego 00–005	Lake Moovalya Colorado River, Parker, AZ	Safety Zone	05/06/2000
San Diego 00–006	Lake Havasu, Colorado River, AZ	Safety Zone	05/18/2000
San Francisco Bay 00–001	San Francisco Bay, San Francisco, CA	Safety Zone	04/11/2000
San Francisco Bay 00–002	Oakland Inner Harbor, Oakland, CA	Safety Zone	05/13/2000
San Juan 00–046	San Juan Harbor, PR	Safety Zone	05/06/2000
San Juan 00–052	San Juan Harbor, PR	Safety Zone	05/23/2000
Tampa 00–038	Tampa Bay, Florida	Safety Zone	04/16/2000
Tampa 00–043	Tampa Bay, Florida	Safety Zone	05/01/2000
Tampa 00–047	South Gandy Channel, Tampa Bay, FL	Safety Zone	05/06/2000
Western Alaska 00–003	Port Graham, Cook Inlet, Alaska	Safety Zone	06/13/2000

[FR Doc. 00–23974 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2000–7543]

RIN 2135–AA11

Seaway Regulations and Rules: Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final Rule; corrections.

SUMMARY: In the Saint Lawrence Seaway Development Corporation (SLSDC) Final Rule amending the Seaway Regulations and Rules (33 CFR part 401) published in the **Federal Register** on August 31, 2000 (65 FR 52912), inadvertent errors were made in the amended authority citation and in the amendment to paragraph § 401.90(c)(2). This document corrects those errors.

DATES: Effective on October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: In the Saint Lawrence Seaway Development Corporation (SLSDC) Final Rule amending the Seaway Regulations and Rules (33 CFR part 401) published in the **Federal Register** on August 31, 2000 (65 FR 52912), inadvertent errors were made in the amended authority citation and in the amendment to § 401.90(c)(2). In the authority citation, ''49 CFR 1.50a'' should have been ''49 CFR 1.52(a)''. In § 401.90(c)(2) the word ''reasonable'' should have been ''reasonably''. This correction makes those changes.

In rule SLSDC 2000–7543 published in the **Federal Register** on August 31, 2000 (65 FR 52912), make the following corrections:

1. On page 52913, in the second column, in the amendment to the authority citation (amendment 1), remove ''49 CFR 1.50a'' and add in its place ''49 CFR 1.52(a)''.

2. On page 52915, in the second column, in the amendment to § 401.90(c)(2) (included in amendment 25), remove ''reasonable'' and add in its place ''reasonably''.

Issued at Washington, DC on September 14, 2000.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 00–24034 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0251; FRL–6868–9]

Revisions to the California State Implementation Plan, Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the Tehama County Air Pollution Control District (TCAPCD) portions of the California State Implementation Plan (SIP). The actions were proposed in the **Federal Register** on April 17, 2000, and concern control of emissions of oxides of nitrogen (NO_X) from industrial, institutional, and commercial boilers, steam generators, and process heaters, stationary piston engines, and stationary gas turbines. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on October 19, 2000.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.
Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.
Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On April 17, 2000 (65 FR 20423), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Air pollution agency	Rule #	Rule title	Adopted	Submitted
Tehama County Air Pollution Control District	4.31	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	03/14/95	5/13/99
Tehama County Air Pollution Control District	4.34	Stationary Piston Engines	06/03/97	5/13/99
Tehama County Air Pollution Control District	4.37	Determination of Reasonably Available Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines.	04/21/98	5/13/99

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

Rule 4.31 and Rule 4.37 allow APCO discretion as to approval of units that are exempt from RACT emission requirements due to lack of technical or economic feasibility. Rule 4.31 allows unapprovable APCO discretion as to schedule of periodic compliance determinations. Rule 4.34 allows APCO discretion in approving the use of alternate portable analyzers.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittals.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. No comments were submitted regarding our proposed action.

III. EPA Action

Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rules deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the Tehama County Air Pollution Control District, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. 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 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: (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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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 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.''

Today's 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.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 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.'' Under E.O. 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.

This 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 E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order 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 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 Clean Air Act do not create any new requirements but simply act on 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. 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 Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air 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 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 costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing 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. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. 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**. 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).

I. 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 November 20, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 3, 2000.

John Wise,

Acting Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraph (c) (263) (i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(263) * * *

(i) * * *

(D) Tehama County Air Pollution Control District.

(*1*) Rule 4:31 adopted on March 14, 1995, Rule 4:34 adopted on June 3, 1997, and Rule 4:37 adopted on April 21, 1998. (EAD)

* * * * *

[FR Doc. 00–23653 Filed 9–18–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2000–7882]

RIN 2127–AI17

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The revised list includes all vehicles that NHTSA has decided to be eligible for importation since October 1, 1999. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: Effective September 19, 2000.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. NHTSA has analyzed this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the revisions resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Because this rulemaking does not impose any regulatory requirements, but merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have been made, it has no economic impact.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does not have any retroactive effect. It does not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state

regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

7. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements, but merely revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation into the United States to include all vehicles for which such decisions have been made since October 1, 1999.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR Parts 400 to 999, which is due for revision on October 1, 2000, good cause exists to dispense with the requirement in 5 U.S.C. § 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal Motor Vehicle Safety Standards is eligible for importation,* is amended as follows:

PART 593—[AMENDED]

1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50

2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under Sec. 593.8.

''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Vehicles for which eligibility decisions have been made are listed alphabetically by make, with the exception of Mercedes-Benz vehicles, which appear at the end of the list. Eligible models within each make are listed numerically by ''VSA,'' ''VSP,'' or ''VCP'' number.

All hyphens used in the Model Year column mean ''through'' (for example, ''1973–1989'' means ''1973 through 1989'').

The initials ''MC'' used in the Manufacturer column mean ''motorcycle.''

The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

Number	Vehicles
VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS Nos. 208, and that comply with FMVSS No. 214.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,0000 lbs.) or less that were manufactured on and after September 1, 1991, and before September 1, 1993, and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less, that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with the requirements of FMVSS Nos. 202, 208, 214, and 216.
VSA–82	All multipurpose passenger vehicles, trucks and buses with a GVWR greater than 4536 kg. (10,000 lbs.) that are less than 25 years old.
VSA–83	All trailers, and all motorcycles that are less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Acura	51	.....	.....	Legend	.....	1988
Acura	77	.....	.....	Legend	.....	1989
Acura	305	.....	.....	Legend	.....	1990–1992
Alfa Romeo	196	.....	.....	164	.....	1989
Alfa Romeo	76	.....	.....	164	.....	1991
Alfa Romeo	156	.....	.....	164	.....	1994
Alfa Romeo	124	.....	.....	GTV	.....	1985
Alfa Romeo	70	.....	.....	Spider	.....	1987

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Audi	93			100		1989
Audi	317			100		1990–1992
Audi	244			100		1993
Audi	160			200 Quattro		1987
Audi	223			80		1988–1989
Audi	332			A6		1998–1999
Audi	337			A8		1997–2000
Audi	238			Avant Quattro		1996
BMW		3		2002		1976
BMW		7		2002A		1976
BMW 248				3 Series		1995–1997
BMW		66		316		1978–1982
BMW	25			316		1986
BMW		23		318i and 318iA		1981–1989
BMW		16		320, 320i, and 320iA		1976–1985
BMW	283			320I		1990–1991
BMW		67		323i		1978–1985
BMW		30		325, 325i, 325iA, and 325E		1985–1989
BMW		24		325e and 325eA		1984–1987
BMW	96			325i		1991
BMW	197			325i		1992–1994
BMW		31		325is and 325isA		1987–1989
BMW	205			325iX		1990
BMW		33		325iX and 325iXA		1988–1989
BMW	194			5 Series		1990–1995
BMW	249			5 Series		1996–1997
BMW	314			5 Series		1998–1999
BMW	4			518i		1986
BMW		68		520 and 520i		1978–1983
BMW	9			520iA		1989
BMW		26		524tdA		1985–1986
BMW		69		525 and 525i		1979–1982
BMW	5			525i		1989
BMW		21		528e and 528eA		1982–1988
BMW		20		528i and 528iA		1979–1984
BMW		15		530i and 530iA		1976–1978
BMW		22		533i and 533iA		1983–1984
BMW		25		535i and 535iA		1985–1989
BMW	15			625CSi		1981
BMW	32			628CSi		1980
BMW		17		630CSi and 630CSiA		1977
BMW		18		633CSi and 633CSiA		1977–1984
BMW		27		635, 635CSi, and 635CSiA		1979–1989
BMW	299			7 Series		1990–1991
BMW	232			7 Series		1992
BMW	299			7 Series		1993–1994
BMW	313			7 Series		1995–1999
BMW		70		728 and 728i		1977–1985
BMW	14			728i		1986
BMW		71		730, 730i, and 730iA		1978–1980
BMW	6			730iA		1988
BMW		72		732i		1980–1984
BMW		19		733i and 733iA		1977–1984
BMW		28		735, 735i, and 735iA		1980–1989
BMW		73		745i		1980–1986
BMW	99			840Ci		1993
BMW	10			850i		1991
BMW	55			850i		1993
BMW		78		All other models except those in the M1 and Z1 series		1976–1988
BMW		29		L7		1986–1987
BMW		35		M3		1988–1989
BMW		34		M5		1988
BMW		32		M6		1987–1988
BMW	260			Z3		1996–1998
BMW MC	228			K1		1990–1993
BMW MC	285			K100		1984–1992
BMW MC	303			K1100, K1200		1993–1998
BMW MC	229			K75S		1987–1995
BMW MC	58			R100S		1977
BMW MC	231			R1100		1994–1997
BMW MC	177			R1100RS		1994
BMW MC	295			R80, R100		1986–1995

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Bristol Bus	.....	.....	10	VRT Bus—Double Decker	.....	1976
Bristol Bus	.....	.....	4	VRT Bus—Double Decker	.....	1977
Bristol Bus	.....	.....	2	VRT Bus—Double Decker	.....	1978–1981
Cadillac	300	.....	.....	DeVille	.....	1994–1999
Chevrolet	150	.....	.....	400SS	.....	1995
Chevrolet	298	.....	.....	Astro Van	.....	1997
Chevrolet	242	.....	.....	Suburban	.....	1989–1991
Chrysler	276	.....	.....	LHS	.....	1996
Chrysler	216	.....	.....	Shadow	.....	1989
Chrysler	273	.....	.....	Town and Country	.....	1993
Citroen	.....	.....	1	XM	.....	1990–1992
Dodge	135	.....	.....	Ram	.....	1994–1995
Ducati MC	241	.....	.....	600SS	.....	1992–1996
Ducati MC	220	.....	.....	748 Biposto	.....	1996–1997
Ducati MC	201	.....	.....	900SS	.....	1990–1996
Eagle	323	.....	.....	Vision	.....	1994
Ferrari	.....	76	.....	208 and 208 Turbo (all models)	.....	1976–1988
Ferrari	.....	36	.....	308 (all models)	.....	1976–1985
Ferrari	.....	37	.....	328 (except GTS)	.....	1985, 1988–1989
Ferrari	.....	37	.....	328 GTS	.....	1985–1989
Ferrari	86	.....	.....	348 TB	.....	1992
Ferrari	161	.....	.....	348 TS	.....	1992
Ferrari	327	.....	.....	360 Modena	.....	1999–2000
Ferrari	256	.....	.....	456	.....	1995
Ferrari	173	.....	.....	512 TR	.....	1993
Ferrari	259	.....	.....	F355	.....	1995
Ferrari	226	.....	.....	F50	.....	1995
Ferrari	.....	38	.....	GTO	.....	1985
Ferrari	292	.....	.....	Marinello 550	.....	1997–1999
Ferrari	.....	74	.....	Mondial (all models)	.....	1980–1989
Ferrari	.....	39	.....	Testarossa	.....	1987–1989
Ford	265	.....	.....	Bronco	.....	1995–1996
Ford	322	.....	.....	Escort (Nicaragua)	.....	1996
Ford	.....	.....	9	Escort RS	.....	1994–1995
Ford	268	.....	.....	Explorer	.....	1991–1998
Ford	250	.....	.....	Windstar	.....	1995–1998
Freightliner	179	.....	.....	FLD12064ST	.....	1991–1996
Freightliner	178	.....	.....	FTLD112064SD	.....	1991–1996
GMC	134	.....	.....	Suburban	.....	1992–1994
Harley Davidson	202	.....	.....	FX, FL, and XL series	.....	1976–1997
Harley Davidson	253	.....	.....	FX, FL, and XL series	.....	1998
Harley Davidson	281	.....	.....	FX, FL, and XL Series	.....	1999
Harley Davidson	321	.....	.....	FX, FL, and XL Series	.....	2000
Hobson	.....	.....	8	Horse Trailer	.....	1985
Honda	280	.....	.....	Accord	.....	1991
Honda	319	.....	.....	Accord	.....	1992–1999
Honda	128	.....	.....	Civic DX	.....	1989
Honda	191	.....	.....	Prelude	.....	1989
Honda	309	.....	.....	Prelude	.....	1994–1997
Honda MC	106	.....	.....	CB1000F	.....	1988
Honda MC	174	.....	.....	CP450SC	.....	1986
Honda MC	290	.....	.....	VF750	.....	1994–1998
Honda MC	34	.....	.....	VFR750	.....	1990
Honda MC	315	.....	.....	VFR750	.....	1991–1997
Honda MC	315	.....	.....	VFR800	.....	1998–1999
Honda MC	294	.....	.....	VT600	.....	1991–1998
Hyundai	269	.....	.....	Elantra	.....	1992–1995
Jaguar	78	.....	.....	Sovereign	.....	1993
Jaguar	.....	41	.....	XJ6	.....	1976–1986
Jaguar	47	.....	.....	XJ6	.....	1987
Jaguar	215	.....	.....	XJ6 Sovereign	.....	1988
Jaguar	.....	40	.....	XJS	.....	1980–1987
Jaguar	175	.....	.....	XJS	.....	1991
Jaguar	129	.....	.....	XJS	.....	1992
Jaguar	195	.....	.....	XJS	.....	1994–1996
Jaguar	336	.....	.....	XJS and XJ6	.....	1988–1990
Jaguar	330	.....	.....	XK–8	.....	1998
Jaguar Daimler	12	.....	.....	Limousine	.....	1985
Jeep	211	.....	.....	Cherokee	.....	1991
Jeep	164	.....	.....	Cherokee	.....	1992
Jeep	254	.....	.....	Cherokee	.....	1993

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Jeep	180			Cherokee		1995
Jeep	224			CJ–7		1979
Jeep	217			Wrangler		1993
Jeep	255			Wrangler		1995
Jeep	341			Wrangler		1998
Kawasaki MC	233			EL250		1992–1994
Kawasaki MC	190			KZ550B		1982
Kawasaki MC	182			ZX1000–B1		1988
Kawasaki MC	222			ZX400		1987–1997
Kawasaki MC	312			ZX6, ZX7, ZX9, ZX10, and ZX11		1987–1999
Kawasaki MC	288			ZX600		1985–1998
Kawasaki MC	247			ZZR1100		1993–1998
Ken-Mex	187			T800		1990–1996
Kenworth	115			T800		1992
Land Rover	212			Defender 110		1993
Land Rover	338			Discovery		1994–1998
Lexus	293			GS300		1993–1996
Lexus	307			RX300		1998–1999
Lexus	225			SC300, SC400		1991–1996
Lincoln	144			Mark VII		1992
Magni MC	264			Australia and Sfida		1996–1998
Maserati	155			Bi-Turbo		1985
Mazda	184			MX–5 Miata		1990–1993
Mazda	199			RX–7		1986
Mazda	42			RX–7		1978–1981
Mazda	279			RX–7		1987–1995
Mercedes Benz		54		190	201.022	1984
Mercedes Benz		54		190 D	201.126	1984–1989
Mercedes Benz		54		190 D (2.2)	201.122	1984–1989
Mercedes Benz		54		190 E	201.028	1986–1989
Mercedes Benz	22			190 E	201.024	1990
Mercedes Benz	45			190 E	201.024	1991
Mercedes Benz	126			190 E	201.018	1992
Mercedes Benz	71			190 E	201.028	1992
Mercedes Benz		54		190 E (2.3)	201.024	1983–1989
Mercedes Benz		54		190 E (2.6)	201.029	1986–1989
Mercedes Benz		54		190 E 2.3 16	201.034	1984–1989
Mercedes Benz		50		200	115.015	1976
Mercedes Benz		52		200	123.020	1976–1980
Mercedes Benz		52		200	123.220	1979–1985
Mercedes Benz		55		200	124.020	1985
Mercedes Benz		52		200 D	123.120	1980–1982
Mercedes Benz	17			200 D	124.120	1986
Mercedes Benz	11			200 E	124.021	1989
Mercedes Benz	109			200 E	124.012	1991
Mercedes Benz	75			200 E	124.019	1993
Mercedes Benz	3			200 TE	124.081	1989
Mercedes Benz		50		220 D	115.110	1976
Mercedes Benz	168			220 E		1993
Mercedes Benz	167			220 TE Station Wagon		1993–1996
Mercedes Benz		52		230	123.023	1976–1985
Mercedes Benz		52		230 C	123.043	1978–1980
Mercedes Benz		52		230 CE	123.243	1980–1984
Mercedes Benz	84			230 CE	124.043	1991
Mercedes Benz	203			230 CE		1992
Mercedes Benz		52		230 E	123.223	1977–1985
Mercedes Benz		55		230 E	124.023	1985–1987
Mercedes Benz	1			230 E	124.023	1988
Mercedes Benz	20			230 E	124.023	1989
Mercedes Benz	19			230 E	124.023	1990
Mercedes Benz	74			230 E	124.023	1991
Mercedes Benz	127			230 E	124.023	1993
Mercedes Benz		52		230 T	123.083	1977–1985
Mercedes Benz		52		230 TE	123.283	1977–1985
Mercedes Benz		55		230 TE	124.083	1985
Mercedes Benz	2			230 TE	124.083	1989
Mercedes Benz		50		230.4	115.017	1976
Mercedes Benz		49		230.6	114.015	1976
Mercedes Benz		50		240 D	115.117	1976
Mercedes Benz		52		240 D	123.123	1977–1985
Mercedes Benz		50		240 D (3.0)	115.114	1976
Mercedes Benz		52		240 TD	123.183	1977–1985

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Mercedes Benz	.....	49	.....	250	114.010	1976
Mercedes Benz	.....	49	.....	250	114.011	1976
Mercedes Benz	.....	52	.....	250	123.026	1976–1985
Mercedes Benz	.....	49	.....	250 C	114.023	1976
Mercedes Benz	.....	49	.....	250 CE	114.022	1976
Mercedes Benz	172	.....	.....	250 D	.....	1992
Mercedes Benz	245	.....	.....	250 E	.....	1990–1993
Mercedes Benz	.....	55	.....	260 E	124.026	1985–1989
Mercedes Benz	105	.....	.....	260 E	124.026	1992
Mercedes Benz	18	.....	.....	260 SE	126.020	1986
Mercedes Benz	28	.....	.....	260 SE	126.020	1989
Mercedes Benz	.....	49	.....	280	114.060	1976
Mercedes Benz	.....	52	.....	280	123.030	1976–1985
Mercedes Benz	.....	49	.....	280 C	114.073	1976
Mercedes Benz	.....	52	.....	280 C	123.050	1977–1980
Mercedes Benz	.....	49	.....	280 CE	114.072	1976
Mercedes Benz	.....	52	.....	280 CE	123.053	1977–1985
Mercedes Benz	.....	49	.....	280 E	114.062	1976
Mercedes Benz	.....	52	.....	280 E	123.033	1976–1985
Mercedes Benz	166	.....	.....	280 E	.....	1993
Mercedes Benz	.....	51	.....	280 S	116.020	1976–1980
Mercedes Benz	.....	53	.....	280 S	126.021	1980–1983
Mercedes Benz	.....	44	.....	280 SC	107.022	1976–1981
Mercedes Benz	.....	51	.....	280 SE	116.024	1976–1988
Mercedes Benz	.....	53	.....	280 SE	126.022	1980–1985
Mercedes Benz	.....	51	.....	280 SEL	116.025	1976–1980
Mercedes Benz	.....	53	.....	280 SEL	126.023	1980–1985
Mercedes Benz	.....	44	.....	280 SL	107.042	1976–1985
Mercedes Benz	.....	52	.....	280 TE	123.093	1977–1985
Mercedes Benz	.....	52	.....	300 CD	123.150	1978–1985
Mercedes Benz	.....	55	.....	300 CE	124.050	1988–1989
Mercedes Benz	64	.....	.....	300 CE	124.051	1990
Mercedes Benz	83	.....	.....	300 CE	124.051	1991
Mercedes Benz	117	.....	.....	300 CE	124.050	1992
Mercedes Benz	.....	52	.....	300 D	123.130	1976–1985
Mercedes Benz	.....	52	.....	300 D	123.133	1977–1985
Mercedes Benz	.....	55	.....	300 D	124.130	1985–1986
Mercedes Benz	.....	55	.....	300 D Turbo	124.133	1985–1989
Mercedes Benz	.....	55	.....	300 E	124.030	1985–1989
Mercedes Benz	114	.....	.....	300 E	124.031	1992
Mercedes Benz	192	.....	.....	300 E 4-Matic	.....	1990–1993
Mercedes Benz	.....	.....	5	300 GE	463.228	1990–1992
Mercedes Benz	.....	.....	3	300 GE	463.228	1993
Mercedes Benz	.....	.....	5	300 GE	463.228	1994
Mercedes Benz	.....	53	.....	300 SD	126.120	1981–1989
Mercedes Benz	.....	53	.....	300 SE	126.024	1985–1989
Mercedes Benz	68	.....	.....	300 SE	126.024	1990
Mercedes Benz	.....	53	.....	300 SEL	126.025	1986–1989
Mercedes Benz	21	.....	.....	300 SEL	126.025	1990
Mercedes Benz	.....	44	.....	300 SL	107.041	1986–1988
Mercedes Benz	7	.....	.....	300 SL	107.041	1989
Mercedes Benz	54	.....	.....	300 SL	129.006	1992
Mercedes Benz	.....	52	.....	300 TD	123.193	1977–1985
Mercedes Benz	.....	55	.....	300 TD Turbo	124.193	1986–1989
Mercedes Benz	.....	55	.....	300 TE	124.090	1986–1989
Mercedes Benz	40	.....	.....	300 TE	124.090	1990
Mercedes Benz	193	.....	.....	300 TE	.....	1992
Mercedes Benz	142	.....	.....	320 SL	.....	1992
Mercedes Benz	310	.....	.....	320CE	.....	1993
Mercedes Benz	.....	44	.....	350 SC	107.023	1976–1979
Mercedes Benz	.....	51	.....	350 SE	116.028	1976–1980
Mercedes Benz	.....	51	.....	350 SEL	116.029	1976–1980
Mercedes Benz	.....	44	.....	350 SL	107.043	1976–1978
Mercedes Benz	.....	44	.....	380 SC	107.025	1981–1989
Mercedes Benz	.....	53	.....	380 SE	126.032	1979–1989
Mercedes Benz	.....	53	.....	380 SE	126.043	1982–1989
Mercedes Benz	.....	53	.....	380 SEL	126.033	1980–1989
Mercedes Benz	.....	44	.....	380 SL	107.045	1980–1989
Mercedes Benz	169	.....	.....	420 E	.....	1993
Mercedes Benz	.....	53	.....	420 SE	126.034	1985–1989
Mercedes Benz	230	.....	.....	420 SE	.....	1990–1991
Mercedes Benz	209	.....	.....	420 SEC	.....	1990

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Mercedes Benz	.....	53	.....	420 SEL	126.035	1986–1989
Mercedes Benz	48	.....	.....	420 SEL	126.035	1990
Mercedes Benz	.....	44	.....	420 SL	107.047	1986
Mercedes Benz	.....	44	.....	450 SC	107.024	1976–1989
Mercedes Benz	.....	51	.....	450 SE	116.032	1976–1980
Mercedes Benz	.....	51	.....	450 SEL	116.033	1976–1988
Mercedes Benz	.....	51	.....	450 SEL (6.9)	116.036	1976–1988
Mercedes Benz	.....	44	.....	450 SL	107.044	1976–1989
Mercedes Benz	.....	.....	11	463	.....	1996
Mercedes Benz	.....	.....	15	463	.....	1997
Mercedes Benz	.....	.....	16	463	.....	1998
Mercedes Benz	.....	.....	13	463 LWB V–8	.....	1992–1996
Mercedes Benz	.....	.....	14	463 SWB	.....	1990–1996
Mercedes Benz	56	.....	.....	500 E	124.036	1991
Mercedes Benz	.....	44	.....	500 SC	107.026	1978–1981
Mercedes Benz	.....	53	.....	500 SE	126.036	1980–1986
Mercedes Benz	35	.....	.....	500 SE	126.036	1988
Mercedes Benz	154	.....	.....	500 SE	.....	1990
Mercedes Benz	26	.....	.....	500 SE	140.050	1991
Mercedes Benz	.....	53	.....	500 SEC	126.044	1981–1989
Mercedes Benz	66	.....	.....	500 SEC	126.044	1990
Mercedes Benz	.....	53	.....	500 SEL	126.037	1980–1989
Mercedes Benz	.....	23	.....	500 SEL	129.066	1989
Mercedes Benz	153	.....	.....	500 SEL	.....	1990
Mercedes Benz	63	.....	.....	500 SEL	126.037	1991
Mercedes Benz	.....	44	.....	500 SL	107.046	1980–1989
Mercedes Benz	33	.....	.....	500 SL	129.066	1991
Mercedes Benz	60	.....	.....	500 SL	129.006	1992
Mercedes Benz	.....	53	.....	560 SEC	126.045	1986–1989
Mercedes Benz	141	.....	.....	560 SEC	126.045	1990
Mercedes Benz	333	.....	.....	560 SEC	.....	1991
Mercedes Benz	.....	53	.....	560 SEL	126.039	1986–1989
Mercedes Benz	89	.....	.....	560 SEL	126.039	1990
Mercedes Benz	.....	44	.....	560 SL	107.048	1986–1989
Mercedes Benz	.....	43	.....	600	100.012	1976–1981
Mercedes Benz	.....	43	.....	600 Landaulet	100.015	1976–1981
Mercedes Benz	.....	.....	43	600 Long 4dr	100.014	1976–1981
Mercedes Benz	.....	43	.....	600 Long 6dr	100.016	1976–1981
Mercedes Benz	185	.....	.....	600 SEC Coupe	.....	1993
Mercedes Benz	121	.....	.....	600 SL	129.076	1992
Mercedes Benz	.....	.....	77	All other models except Model ID 114 and 115 with sales designations ''long,'' ''station wagon,'' or ''ambulance.''.	.....	1976–1989
Mercedes Benz	331	.....	.....	C Class	.....	1994–1999
Mercedes Benz	277	.....	.....	CL500	.....	1998
Mercedes Benz	207	.....	.....	E200	.....	1994
Mercedes Benz	278	.....	.....	E200	.....	1995–1998
Mercedes Benz	168	.....	.....	E220	.....	1994–1996
Mercedes Benz	245	.....	.....	E250	.....	1994–1995
Mercedes Benz	166	.....	.....	E280	.....	1994–1996
Mercedes Benz	240	.....	.....	E320	.....	1994–1998
Mercedes Benz	318	.....	.....	E320 Station Wagon	.....	1994–1999
Mercedes Benz	169	.....	.....	E420	.....	1994–1996
Mercedes Benz	163	.....	.....	E500	.....	1994
Mercedes Benz	304	.....	.....	E500	.....	1995–1997
Mercedes Benz	.....	.....	6	G320	.....	1995
Mercedes Benz	342	.....	.....	S Class	.....	1995–1998
Mercedes Benz	325	.....	.....	S Class	.....	1999
Mercedes Benz	85	.....	.....	S280	140.028	1994
Mercedes Benz	236	.....	.....	S320	.....	1994
Mercedes Benz	267	.....	.....	S420	.....	1994
Mercedes Benz	235	.....	.....	S500	.....	1994
Mercedes Benz	185	.....	.....	S600 Coupe	.....	1994
Mercedes Benz	214	.....	.....	S600L	.....	1994
Mercedes Benz	343	.....	.....	SE Class	.....	1992–1994
Mercedes Benz	343	.....	.....	SEL Class	.....	1992–1994
Mercedes Benz	329	.....	.....	SL Class	.....	1993–1996
Mercedes Benz	257	.....	.....	SLK	.....	1997–1998
Mitsubishi	13	.....	.....	Galant SUP	.....	1989
Mitsubishi	8	.....	.....	Galant VX	.....	1988
Mitsubishi	170	.....	.....	Pajero	.....	1984
Moto Guzzi MC	118	.....	.....	Daytona	.....	1993
Moto Guzzi MC	264	.....	.....	Daytona RS	.....	1996–1998

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Nissan	162			240SX		1988
Nissan	198			300ZX		1984
Nissan		75		Fairlady and Fairlady Z		1976–1979
Nissan			17	GTS, GTR		1990–1999
Nissan	138			Maxima		1989
Nissan	316			Pathfinder		1987–1995
Nissan	139			Stanza		1987
Nissan		75		Z and 280Z		1976–1981
Peugeot		65		405		1989
Pontiac	189			Transport MPV		1993
Porsche	29			911 C4		1990
Porsche		56		911 Cabriolet		1984–1989
Porsche		56		911 Carrera		1976–1989
Porsche	52			911 Carrera		1992
Porsche	165			911 Carrera		1993
Porsche	103			911 Carrera		1994
Porsche	165			911 Carrera		1995–1996
Porsche		56		911 Coupe		1976–1989
Porsche		56		911 Targa		1976–1989
Porsche		56		911 Turbo		1976–1989
Porsche	125			911 Turbo		1992
Porsche		58		914		1976
Porsche		59		924 Coupe		1976–1989
Porsche		59		924 S		1987–1989
Porsche		59		924 Turbo Coupe		1979–1989
Porsche	266			928		1991–1996
Porsche	272			928		1997–1998
Porsche		60		928 Coupe		1976–1989
Porsche		60		928 GT		1979–1989
Porsche		60		928 S Coupe		1983–1989
Porsche		60		928 S4		1979–1989
Porsche	210			928 S4		1990
Porsche	97			944		1990
Porsche		61		944 Coupe		1982–1989
Porsche		61		944 S Coupe		1987–1989
Porsche	152			944 S2 2 door Hatchback		1990
Porsche		61		944 Turbo Coupe		1985–1989
Porsche	116			946		1994
Porsche		79		All other models except Model 959		1976–1989
Porsche	261			Boxster		1997
Rolls Royce	340			Bentley		1987–1989
Rolls Royce	186			Bentley Brooklands		1993
Rolls Royce	258			Bentley Continental R		1990–1993
Rolls Royce	53			Bentley Turbo		1986
Rolls Royce	291			Bentley Turbo R		1992–1993
Rolls Royce	243			Bentley Turbo R		1995
Rolls Royce	122			Camargue		1984–1985
Rolls Royce	339			Corniche		1976–1985
Rolls Royce		62		Silver Shadow		1976–1979
Rolls Royce	188			Silver Spur		1984
Saab	158			900		1983
Saab	270			900 S		1987–1989
Saab	213			900 SE		1995
Saab	219			900 SE		1990–1994
Saab	219			900 SE		1996–1997
Saab	59			9000		1988
Saab	334			9000		1994
Sprite			12	Musketeer Trailer		1980
Suzuki MC	111			GS 850		1985
Suzuki MC	287			GSF 750		1996–1998
Suzuki MC	208			GSX 750		1983
Suzuki MC	275			GSXR 750		1986–1998
Suzuki MC	227			GSXR1100		1986–1997
Toyota	308			Avalon		1995–1998
Toyota		63		Camry		1987–1988
Toyota	39			Camry		1989
Toyota		64		Celica		1987–1988
Toyota		65		Corolla		1987–1988
Toyota	320			Land Cruiser		1978–1980
Toyota	252			Landcruiser		1981–1988
Toyota	101			Landcruiser		1989
Toyota	218			Landcruiser		1990–1996

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Toyota	324	.....	.....	MR2	.....	1990–1991
Toyota	326	.....	.....	Previa	.....	1991–1992
Toyota	302	.....	.....	Previa	.....	1993–1997
Toyota	328	.....	.....	RAV4	.....	1996
Toyota	200	.....	.....	Van	.....	1987–1988
Triumph MC	263	.....	.....	Bonneville	.....	1976
Triumph MC	311	.....	.....	Thunderbird	.....	1995–1999
Volkswagen	237	.....	.....	Beetle Convertible	.....	1976–1979
Volkswagen	237	.....	.....	Beetle Sedan	.....	1976–1977
Volkswagen	306	.....	.....	Eurovan	.....	1993–1994
Volkswagen	159	.....	.....	Golf	.....	1987
Volkswagen	80	.....	.....	Golf	.....	1988
Volkswagen	92	.....	.....	Golf	.....	1993
Volkswagen	73	.....	.....	Golf Rally	.....	1988
Volkswagen	149	.....	.....	GTI (Canadian)	.....	1991
Volkswagen	274	.....	.....	Jetta	.....	1994–1996
Volkswagen	148	.....	.....	Passat 4 door Sedan	.....	1992
Volkswagen	.....	42	.....	Scirocco	.....	1986
Volkswagen	284	.....	.....	Transporter	.....	1988–1989
Volkswagen	251	.....	.....	Transporter	.....	1990
Volvo	43	.....	.....	262C	.....	1981
Volvo	87	.....	.....	740 Sedan	.....	1988
Volvo	286	.....	.....	850 Turbo	.....	1995–1998
Volvo	95	.....	.....	940 GL	.....	1993
Volvo	132	.....	.....	945 GL	.....	1994
Volvo	176	.....	.....	960 Sedan and Wagon	.....	1994
Volvo	335	.....	.....	S70	.....	1998–2000
Yamaha MC	113	.....	.....	FJ1200	.....	1991
Yamaha MC	171	.....	.....	RD–350	.....	1983
Yamaha MC	301	.....	.....	Virago	.....	1990–1998

Issued on September 11, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–23675 Filed 9–18–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2000–7629; Notice 2]

RIN 2127–AI11

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year 2001 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS).

We are increasing the fee for the registration of a new importer from $491 to $584, and the annual fee authorized by statute from $350 to $416. These fees include the costs of maintaining the registered importer (RI) program. The fee required to reimburse the U.S. Customs Service for conformance bond processing costs will increase from $5.40 to $5.75 per bond.

The fee payable for a petition seeking a determination that a nonconforming vehicle is capable of conversion to meet the FMVSS will be reduced from $199 to $175 if the nonconforming vehicle is substantially similar to conforming vehicles. With respect to vehicles that have no substantially similar counterpart, the petition fee increases from $721 to $800. In addition, the fee payable by the importer of each ''substantially similar'' vehicle that benefits from an eligibility determination will be reduced to $105 but remain at $125 for vehicles not ''substantially similar,'' regardless of whether the determination is made pursuant to a petition or by NHTSA on its own initiative. This fee does not apply to vehicles imported from Canada admitted under VSA 80–83, or to vehicles imported on and after October 1, 2000 that are covered by determinations that were made on the agency's own initiative before October 1, 2000, for which all costs have now been recovered.

Finally, the $16 fee that a RI must pay as a processing cost for review of each conformity package that it submits will remain at $16. However, if the RI files the HS–7 Declaration form for the vehicle electronically with the U.S. Customs Service though the Automated Broker Interface, and the RI has an e-mail address and pays by credit card, the present fee of $13 will be reduced to $6 per vehicle if the information in the entry and certificate is correct.

DATES: The effective date of the final rule is October 1, 2000.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, at 61 FR 32411, we published a notice that discussed in full the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562, since recodified as 49 U.S.C. 30141–47. The reader is referred to that notice for background information relating to this rulemaking action. Certain fees were initially established to become effective January 31, 1990, and have been in effect and occasionally modified since then.

The fees applicable in any fiscal year are to be established before the beginning of such year. On July 19, 2000, we proposed fees that would become effective on October 1, 2000, the beginning of FY 2001 (65 FR 44713). There were no comments on this notice.

The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility determinations, and to cover the cost of processing the bonds furnished to the Customs Service. We last amended the fee schedule in 1998; it has applied in Fiscal Years 1999–2000.

The fees are based on actual time and costs associated with the tasks for which the fees are assessed and reflect the slight increase in hourly costs in the past two fiscal years attributable to the approximately 3.68 and 4.94 percent raise (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective on January 1 each year in the years 1999 and 2000.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that RIs must pay ''the annual fee the Secretary of Transportation establishes * * * to pay for the costs of carrying out the registration program for importers * * *.'' This fee is payable both by new applicants and by existing RIs. In order for it to maintain its registration, at the time it submits its annual fee, each RI must also file a statement affirming that the information it previously furnished in its registration application (or as later amended) remains correct (49 CFR 592.5(e)).

In accordance with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees which would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We will increase this fee from $290 to $345 for new applications. We will increase the fee representing the review of the annual statement from $149 to $177. The adjustments reflect our recent experience in time spent reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the past two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program which arise from our need to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to possible revocation or suspension of registrations.

Based upon our review of the costs associated with this program, the portion of the fee attributable to the maintenance of the registration program is approximately $239 for each RI, an increase of $38. When this $239 is added to the $345 representing the registration application component, the cost to an applicant equals $584, which is the fee we are adopting. This represents an increase of $93 from the existing fee. When the $239 is added to the $177 representing the annual statement component, the total cost to the RI is $416, which represents an increase of $66.

Section 594.6(h) recounts indirect costs that were previously estimated at $12.12 per man-hour. This will be raised $1.78, to $13.90, based on the agency costs discussed above.

Sections 594.7, 594.8—Fees to Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay ''other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter.'' This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by RIs or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under an eligibility decision made pursuant to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated pro rata share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and the small raises under the General Schedule also must be taken into account in the computation of costs. However, we have been able to reduce our processing costs through combining several decisions in a single **Federal Register** notice as well as achieving efficiencies through improved word processing techniques. Accordingly, we are reducing the fee of $199 presently required to accompany a ''substantially similar'' petition to $175, but are increasing from $721 to $800 the fee for petitions for vehicles that are not substantially similar and that have no certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection remains at $550 for each of those types of petitions.

The importer of each vehicle determined to be eligible for importation pursuant to a petition currently must pay $125 upon its importation, the same fee applicable to those whose vehicles covered by an eligibility determination on the agency's initiative (other than vehicles imported from Canada that are covered by code VSA 80–83, for which no eligibility determination fee is assessed). This fee will change due to the different costs associated with petitions. For petitions based on non-substantially similar vehicles, the fee will remain at $125. For petitions based on substantially similar vehicles, the fee will be reduced from $125 to $105. Costs associated with previous eligibility determinations on the agency's own initiative will have been recovered by October 1, 2000. We shall apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on and after October 1, 2000.

Section 594.9—Fee to Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay ''any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury'' upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that we will make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS–

9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 1999 and 2000, we are increasing the current processing fee by $0.35, from $5.40 per bond to $5.75.

Section 594.10 Fee for review and processing of conformity certificate

This fee currently requires each RI to pay $16 per vehicle to cover the cost of the agency's review of the certificate of conformity furnished to the Administrator. However, if a RI enters a vehicle with the U.S. Customs Service through the Automated Broker Interface (ABI), has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the fee is $13. Based upon an analysis of the direct and indirect costs for the review and processing of these certificates, we find that the costs continue to average $16 per vehicle for non-automated entries, and we therefore did not propose a change in this fee. We estimate that there has been a reduction in cost to the agency for automated entries of approximately $7, and we will pass this on to the RI by reducing the fee from $13 to $6 per vehicle if all the information in the ABI entry is correct. Because errors in ABI entries eliminate the time-saving advantages of electronic entry, the processing cost will remain at $16 for certificates of conformity or ABI entries containing incorrect information.

Effective Date

The effective date of the final rule is October 1, 2000.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886. Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule are so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendment would primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that a substantial number of these companies cannot pay the fees proposed by this action which are only modestly increased (and in some instances decreased) from those now being paid by these entities, and which can be recouped through their customers. The cost to owners or purchasers of altering nonconforming vehicles to conform with the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions are not affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 ''Federalism'' and 12875 ''Enhancing the Intergovernmental Partnership.'' E.O. 13132 requires NHTSA 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.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' 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, NHTSA may not issue a regulation that has federalism implication, 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because the final rule based will not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, 49 CFR part 594 is amended as follows:

1. The authority citation for part 594 reads as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.6 is amended by:

a. Revising the introductory language in paragraph (a),

b. Revising paragraph (b),

c. Removing the year ''1998'' in paragraph (d) and adding in its place ''2000,''

d. Revising the final sentence of paragraph (h); and

e. Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2000, must pay an annual fee of $584, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2000, is $345. The sum of $345, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $13.90 per man-hour for the period beginning October 1, 2000.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2000, is $239. When added to the costs of registration of $345, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $584. The annual renewal registration fee for the period beginning October 1, 2000, is $416.

3. Section 594.7 is amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2000, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

4. Section 594.8 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(c) If a determination has been made on or after October 1, 2000, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

5. Section 594.9 is amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2000, for which a certificate of conformity is furnished, is $5.75.

6. Section 594.10 is amended by adding two new sentences to the end of paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) * * * However, if the vehicle covered by the certificate has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $16.

Issued on: September 11, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–23674 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000913257-0257-01; I.D. 081800D]

RIN 0648-AO52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Prohibition of Trap Gear in the Royal Red Shrimp Fishery in the Gulf of Mexico

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: This emergency interim rule prohibits the use of trap gear in the royal red shrimp fishery within the exclusive economic zone (EEZ) of the Gulf of Mexico. The intended effect of this emergency interim rule is to prevent gear conflict and overfishing in the royal red shrimp fishery.

DATES: This emergency interim rule is effective September 14, 2000, through March 18, 2001. Comments must be received no later than 4:30 p.m., eastern standard time, on October 19, 2000.

ADDRESSES: Written comments on this emergency interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be submitted via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet. Comments on ambiguity or unnecessary complexity arising from the language used in this emergency interim rule should be directed to the Southeast Regional Office at the address given here.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

On January 27, 1999, NMFS published a final rule (64 FR 4030) pursuant to section 305(a) of the Magnuson-Stevens Act, establishing a list of authorized fisheries and fishing gear and notification guidelines for actions to be taken by regional fishery management councils (councils) and NMFS upon receipt of a notification of the intent to fish or use a fishing gear that is not on that authorized list. The list of fisheries and gear was revised upon publication of a revised final rule effective December 1, 1999 (64 FR 67511, December 2, 1999). Under the final rule, no person or vessel may employ fishing gear or engage in a fishery not included on the list without

giving 90-day advance written notice to the appropriate council.

Upon receipt of a notification of intent to participate in an unlisted fishery or use an unlisted fishing gear, a council must immediately begin consideration of the notification. If the council finds that the use of an unlisted gear or participation in an unlisted fishery would not compromise the effectiveness of conservation and management efforts, it shall recommend that NMFS amend the list of authorized fisheries and gear. If the council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend that NMFS not amend the authorized list of fisheries and gear. Instead, it will request NMFS to publish emergency or interim regulations specifically to prohibit the use of the proposed gear, and begin preparation of an amendment to the subject fishery management plan, if appropriate. Ninety days after the receipt by the Council of a notification, the individual may use the gear unless regulatory action is taken to prohibit the use of the gear.

Royal red shrimp have been a small component of the Gulf of Mexico shrimp fishery since the early 1960s. The fishery uses modified penaeid shrimp trawls at depths exceeding 100 fathoms (183 meters). Trap gear is not an authorized gear in this fishery under the provisions of the FMP. On June 16, 2000, a fisherman notified the Council of his intent to use trap gear to fish for royal red shrimp in the EEZ of the Gulf of Mexico. At its July 10-13, 2000, meeting, the Council considered the notification, and based on the information available, the Council determined that allowing trap gear in the royal red shrimp fishery posed a threat to ongoing conservation and management efforts because of a potential for gear conflicts with the existing trawl fishery.

Criteria For Issuing An Emergency Rule

NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), require that an emergency situation results from recent, unforeseen events, or recently discovered circumstances; presents a serious management problem; and realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process. Compliance with the NMFS policy guidelines is discussed here.

Recent, Unforeseen Events or Recently Discovered Circumstances

Based on its review of the June 16, 2000, notification to use trap gear in the royal red shrimp fishery, the Council voted to add options to its draft FMP Amendment 11 to prohibit the use of this gear in the subject fishery. Amendment 11 is scheduled for completion in November 2000; must be reviewed by NMFS; and, if approved, likely would not be implemented prior to April 2001. Therefore, to avoid management problems in the fishery, as identified by the Council, a prohibition on the use of trap gear must be implemented on or before September 14, 2000 (the date 90 days after receipt by the Council of notification of intent to use unauthorized gear). Consequently, the Council voted without objection to request NMFS to promulgate regulations to prohibit the use of trap gear in the royal red shrimp fishery within the EEZ of the Gulf of Mexico.

Serious Management Problems in the Fishery

The intended effect of this emergency interim rule is to prevent gear conflict that could compromise vessel safety, and to prevent overfishing in the royal red shrimp fishery. Gear conflicts are likely to occur between the traditional trawl fishery and the proposed trap line fishery on the royal red shrimp fishing grounds. This could result in substantial damage and loss of fishing gears and an increase in cost for participants in the fishery, as well as vessel safety issues because of the depth of the fishing effort, the weight of the deployed gears, and the fact that the fishing grounds are far offshore. Additionally, the introduction of new fishing effort could result in landings exceeding maximum sustainable yield (MSY), thus overfishing the resource. Since 1993, landings from the traditional trawl fishery have ranged from 200,000 to 335,000 lb (90,719 to 151,953 kg), which is approaching the MSY of 392,000 lb (177,808 kg) for the fishery.

Immediate Benefits

Prohibiting the use of trap gear in the royal red shrimp fishery is anticipated to avoid economic impacts from gear damage and loss from gear conflicts in the fishery, and maintain harvest within the MSY threshold, thus, preventing overfishing. Should landings exceed MSY, and overfishing occur, additional actions would be necessary to reduce the allowable catch for either or both gear types in the fishery. The Council concluded, and NMFS agrees, that a restriction on the landings by the traditional trawl fishery to accommodate a non-traditional fishery would be inappropriate, particularly given that the trap fishery also would result in serious gear conflicts, most likely jeopardizing the ability to obtain optimum yield from the fishery.

Period of Effectiveness

This emergency interim rule is being made effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. It may be extended for up to an additional 180 days, provided that the public has had an opportunity to comment on it and the Council is actively preparing an FMP amendment to address the emergency on a permanent basis. Public comments on this emergency interim rule and the Council's actions will be considered in determining whether to extend this emergency interim rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to prevent gear conflict and overfishing in the royal red shrimp fishery. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has assessed the regulatory impacts associated with this emergency interim rule.

Currently, trap gear is not on the list of authorized fishing gear (50 CFR 600.725) for the royal red shrimp fishery in the Gulf of Mexico and, therefore, is not allowed. However, consistent with the guidelines contained in 50 CFR 600.725, an individual fisherman may notify the Council of the intent to use a gear not on the list. Ninety days after such notification, the individual may use the gear unless regulatory action is taken to prohibit the use of the gear. The Council was notified on June 16, 2000, of intent to use trap gear in the royal red fishery. This emergency interim rule is designed to maintain the status quo until such time as the Council can prepare and submit to NMFS for review and approval an FMP amendment to prohibit the gear. Because the emergency interim rule is designed to prohibit the use of trap gear in the royal red shrimp fishery, namely the status quo, there are no expected economic consequences to the participants in the fishery.

If the use of trap gear in the royal red shrimp fishery in the EEZ of the Gulf of

Mexico were not prohibited by September 14, 2000, the Council concluded, as explained in the **SUPPLEMENTARY INFORMATION**, that serious gear conflict, economic losses to fishery participants, and overfishing could occur. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that providing notice and the opportunity for prior public comment would be contrary to the public interest. Because it would delay the completion of regulatory action to prohibit the use of trap gear in the royal red shrimp fishery in the EEZ of the Gulf of Mexico beyond September 14, 2000. For this same reason, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a delay in the effective date of this emergency interim rule would be contrary to the public interest because this emergency interim rule does not impose new or additional restrictions; rather, it maintains the status quo condition regarding allowable gear in the royal red shrimp fishery, i.e., trap gear is not allowed, no time is required to come into compliance with the rule. For this reason, under 5 U.S.C. 553(d)(3), the AA also finds good cause that a delay in the effective date of this emergency interim rule is unnecessary.

Because prior notice and an opportunity for public comment are not required to be provided for this emergency interim rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule. Such comments should be sent to NMFS Southeast Regional Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 13, 2000.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.31, paragraph (k) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(k) Traps for royal red shrimp in the Gulf EEZ. A trap may not be used to fish for royal red shrimp in the Gulf EEZ. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

[FR Doc. 00–24012 Filed 9–14–00; 2:14 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000623193-0193-01; I.D. 060800D]

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Catch in the Bering Sea and Aleutian Islands, Correction

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

ACTION: Final 2000 harvest specifications; technical amendment; correction.

SUMMARY: This document corrects Table 7 of the technical amendment to the final 2000 prohibited species catch (PSC) allowances specified for trawl groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI).

DATES: Effective June 15, 2000, through 2400 hrs A.l.t. December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: This document contains corrections to the technical amendment to the final 2000 PSC allowances specified for trawl groundfish fisheries of the BSAI.

The technical amendment (65 FR 42302, July 10, 2000) to the Final 2000 Harvest Specifications for Groundfish (65 FR 8282, February 18, 2000) established PSC allowances under regulations implementing Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FR 65 31105, May 16, 2000). The 2000 Pacific halibut and crab PSC limits for the BSAI trawl fisheries were reduced to the following amounts: Pacific halibut, 3,675 mt; Zone 1 red king crab, 97,000 animals; Chionoecetes (C.) opilio, 4,350,000 animals; C. bairdi Zone 1,830,000; and C. bairdi Zone 2, 2,520,000 animals.

Correction

In the technical amendment, Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Catch in the Bering Sea and Aleutian Islands, published on July 10, 2000 (65 FR 42302), FR Doc. 00-17269, corrections are made as follows:

1. In the document, 2000 harvest specifications; technical amendment, published on July 10, 2000 (65 FR 42302), FR Doc. 00-17269, on page 42303, mathematical errors were made in Table 7. Table 7 is corrected to read as follows:

Table 7 to Part 679 [Corrected]

In the second column, under the heading, ''Halibut mortality (mt) BSAI,'' the sixth entry, ''7457'' that corresponds with ''Jan. 1-April 30,'' is corrected to read ''457'' and in the last line ''4,675'' that corresponds with the ''Grand Total'' is corrected to read ''4,576''.

Dated: September 13, 2000.

Bruce C. Morehead,

Acting Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–24015 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 182
Tuesday, September 19, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 390

[Docket No. 99–029P]

Sharing Recall Information With State and Other Federal Government Agencies

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) proposes to add regulations concerning sharing recall information with State and other Federal government agencies. This proposed rule would permit FSIS to disclose to officials of State governments certain proprietary information without being compelled to disclose the information to the public under the Freedom of Information Act (FOIA). Also, the proposed rule would advise the public that FSIS will share proprietary information with other Federal agencies. Specifically, this proposal addresses situations where, during a recall activity, it is beneficial for FSIS to share certain proprietary information from a firm with State and other Federal government agencies. This action is necessary to facilitate cooperation in regulatory activities and will contribute to improved public health protection.

DATES: Submit comments on or before November 20, 2000.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #99–029P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Gioglio, Director, Recall Management Division, Office of Public Health and Science, FSIS, U.S. Department of Agriculture. The mailing address is Maildrop 343, 3rd Floor—Room 333, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone number (202) 690–6389.

SUPPLEMENTARY INFORMATION:

Background

Overview of Recalls of Meat and Poultry Products

FSIS is responsible for ensuring that meat and poultry products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), which require Federal inspection and regulation of meat and poultry products prepared for distribution in commerce for use as human food. When meat or poultry products in commerce are found to present an actual or potential health hazard to consumers, or otherwise to violate the provisions of the FMIA or PPIA, FSIS will request that firms recall the suspect products.

Recalls are voluntary actions taken by manufacturers or distributors in cooperation with Federal and State agencies. A product is recalled when found to be adulterated or misbranded under provisions of the FMIA or PPIA. Although the product is marked, inspected and passed, FSIS may determine, based on information that has become available to the Agency, the product is no longer eligible to bear the mark of inspection.

FSIS does not have statutory authority to order recalls. Recall actions are initiated by a firm, either on its own initiative or at the request of FSIS. If a firm does not agree to initiate a recall, FSIS has authority to detain and seize the product once it is located. A recall may be undertaken by a firm that manufactures, wholesales, or distributes meat or poultry products. Retail establishments are exempt from inspection. However, when meat or poultry products are manufactured at retail establishments and found to be adulterated, FSIS expects the retail establishment to recall the product. FSIS will coordinate with State agencies to accomplish the recall. Firms can be large corporations, partnerships, or family owned businesses.

When firms conduct recalls, the Recall Management Division (RMD) of FSIS classifies the health risk associated with the recalled products. A Class I recall involves a health hazard situation where there is a reasonable probability that the use of the product will cause serious, adverse health consequences or death. Class II recalls involve a potential health hazard situation where there is a remote probability of adverse health consequences from the use of the product. Class III recalls involve a situation where the use of the product will not cause adverse health consequences. RMD also recommends the scope (the amount and kind of product recalled) of the recall, distributes recall notification reports to public health officials, and assists FSIS' Office of Congressional and Public Affairs in notifying the public through press releases. Information on all recalls is posted on the FSIS web site, www.fsis.usda.gov. FSIS' Office of Field Operations, compliance personnel verify that firms conduct voluntary recalls and evaluate their effectiveness through checks performed in the field.

Changes in Recall Policy and New Recall Directive

Over the last few years, firms have initiated several major Class I recalls at FSIS' request, one of which involved over 25 million pounds of product believed to be contaminated with *E. coli* O157:H7. In November 1997, FSIS created a Recall Working Group to assess the adequacy of its current recall policies and practices. Based on a full review of issues presented to it, the Recall Working Group determined that the Agency's recall policies and procedures are basically sound; however, the Working Group believed that some improvements could be made in the recall process.

Based on its careful consideration of that report and the comments on it, and in consultation with the Secretary of Agriculture and the Under Secretary for Food Safety, FSIS issued on January 19, 2000 a new version of FSIS Directive 8080.1 (Revision 3), ''Recall of Meat and Poultry Products'' and issued a Guide (as an amendment to the new Directive), ''Product Recall Guidelines for Establishments.'' The main purpose of the Directive is to update the Agency's procedures and to set out two new policies. First, FSIS has begun issuing

press releases for all meat and poultry recalls. The press releases are drafted to reflect the health risk presented by the product being recalled, and how the product is identifiable to consumers and users.

Second, the Directive defines the circumstances in which FSIS will consider a recall to be completed. The Agency states that it will consider a recall to be complete when the recalling firm has made all reasonable efforts to recover the product, and it either has disposed of the product or has it under control. FSIS addressed this concern in response to complaints that some recalls remained open for months and even years.

The Guide outlines the actions that a firm should take in anticipation of a recall and in the event that the plant decides to recall product. The Guide states that a firm should prepare and maintain a detailed, written recall plan. It further states that this plan should describe, on a step-by-step basis, the procedure that the firm will follow when recalling a product.

Changes in Recall Policy and Sharing Recall Information With State and Federal Agencies

This proposed rule is intended to facilitate the sharing of certain proprietary (non-public) information (e.g., distribution lists) with State and other Federal government agencies in order to enhance cooperation in recall activities, contribute to improved public health protection, and maintain effective communication with these agencies. FSIS has modeled this proposed rule, in part, on two Food and Drug Administration (FDA) regulations, 21 CFR 20.85 and 20.88, that permit FDA to disclose certain proprietary information to State governments and other Federal officials without requiring FDA to make the information or documents available to the public.

Historically, FSIS' communications with State agencies generally had the same status as communication with any member of the public. In accordance with 5 U.S.C. 552(a)(3)(A), any record of the Agency that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public.

There are times when public disclosure of information will undermine legitimate private rights and government responsibilities. In drafting the FOIA (5 U.S.C. 552), Congress recognized the need for the Federal government to be able to withhold certain categories of information from public disclosure. Examples of such categories of records relevant to FSIS include:

1. Trade secret and confidential commercial information (5 U.S.C. 552 (b)(4));

2. Predecisional documents to protect the deliberative process (5 U.S.C. 552 (b)(5)); and

3. Information the disclosure of which may invade personal privacy (5 U.S.C. 552 (b)(6)).

FSIS works closely with Federal and State agencies in situations involving outbreaks of foodborne illness and the recall of meat and poultry products to protect the public health. To enhance cooperation with State and other Federal government agencies, FSIS needs the ability, in certain circumstances, to disclose confidential commercial information to other agencies.

Therefore, FSIS is proposing to amend 9 CFR part 390 by adding a new section that will enable FSIS to share with other State agencies non-public information that is protected from mandatory public disclosure by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Exemption 4 covers two broad categories of information in Federal agency records—trade secret information and information that is: (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential (''confidential commercial information''). The new section also addresses sharing of information with other Federal agencies which is not limited by FOIA, but is included in the proposed rule to clearly advise persons that information will be shared with other Federal agencies.

The Agency is proposing to provide that the Administrator or designee may disclose confidential commercial information submitted to FSIS to State and other Federal government agencies as part of a cooperative effort between agencies, provided that:

The State government officials have provided a written statement establishing authority to protect confidential commercial information from public disclosure and a written commitment not to disclose such information without the submitter's written permission or written confirmation from FSIS that the information is no longer confidential. Federal agencies must provide a written commitment not to disclose the information, but to refer the confidential commercial information to FSIS in order for FSIS to respond to the request for information.

FSIS intends that the disclosure of information to other agencies will be for the purpose of recalls of meat and poultry products. The regulatory text of this proposed rule limits the sharing of information to recalls.

The proposed amendment to 9 CFR part 390 would establish that the above government officials are not members of the public for purposes of disclosure of confidential commercial information submitted to FSIS, and that such disclosures would not invoke the requirements in 9 CFR part 390 of uniform access to records. Disclosure of confidential commercial information to government agencies as specified in the proposed amendment would be an ''authorized'' disclosure.

FSIS believes this proposed rule will do nothing to diminish current public access to Agency records. The purpose of this proposed rule is not to reduce the number or types of records that will be available to the public from FSIS but to enhance the Agency's ability to engage in information exchanges.

Also, this proposed regulation is related to a Memorandum of Understanding (MOU) between FSIS and the Food and Drug Administration (FDA) signed in February 1999 that facilitates sharing of information. This MOU is limited in effect by FSIS' inability to provide proprietary information on recalls to FDA or other affected authorities. This regulation would remedy this limitation of the MOU.

Compliance With Executive Order 12866 and the Regulatory Flexibility Act of 1996

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because this rule promotes cooperation among FSIS, other Federal and State agencies.

Economic Impact

Impacts/Net Benefits Associated With the Proposed Action

This proposed action is new. No significant changes in recall activities are expected as a result of this action.

1. Net benefits are likely to be increased public health protection.

2. Net benefits are likely to be enhanced communications and cooperation between FSIS and State and other Federal agencies.

Expected Benefits

During a meat or poultry recall, FSIS will be able to share sensitive,

confidential proprietary information with State agencies and other Federal agencies without having to disclose this information to the general public or media under the Freedom of Information Act. This will enable FSIS staff to verify that adulterated, unhealthful, or misbranded products are removed from consumer channels quickly and efficiently and to protect the public health.

Because of the proposed rule, the sharing of recall information will help all the government agencies work aggressively together to find solutions that will enhance public health and provide consumer protection from foodborne illnesses. The State agencies will provide a written agreement not to disclose such information without the submitter's written permission or written confirmation from FSIS. Federal agencies must agree not to release the information but to refer the information to FSIS for a response to the requestor. This will ensure that the other government agencies do not inadvertently share this information with the public. Increased consumer protection and public health, and efficiency in government are the basic benefits of this proposed rule.

Expected Costs

There are minimal costs associated with sharing recall information with State and other Federal agencies. Costs will consist of the labor it takes to draft and agree to Memorandum of Understandings, and the labor it takes to share the information with these agencies, but these costs are already absorbed by the labor cost of these officials. There are no costs to industry.

Expected Effects on Small Entities

No disproportionate significant economic impact will be experienced by small entities. FSIS will share with States and other Federal officials confidential and proprietary information of both large and small entities, if the recall warrants it.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' FSIS has considered potential impacts of this proposed rule on environmental and health conditions in low-income and minority communities.

Sharing recall information with other agencies will benefit FSIS, the regulated industry and consumers. Thus, this proposed regulation does not adversely affect the public health or environment in low-income and minority communities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 390.7 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to a denial of access of information.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 9 CFR Part 390

Confidential business information, Freedom of information, Government employees.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR part 390 as follows:

1. The heading of 9 CFR part 390 is revised to read as follows:

PART 390—FREEDOM OF INFORMATION AND PUBLIC INFORMATION

2. The authority citation for part 390 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR 1.3, 2.7.

3. Section 390.9 is added to read as follows:

§ 390.9 Communications with State and other Federal government agencies.

(a) The Administrator of the Food Safety and Inspection Service (FSIS) or designee, may authorize the disclosure of confidential commercial information submitted to FSIS, or incorporated into agency-prepared records, to State and other Federal government agencies as part of a recall of meat or poultry products, provided that:

(1) The State agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided by FSIS without the written permission of the submitter of the information or written confirmation by FSIS that the information no longer has confidential status. Federal government agencies must provide a written commitment not to disclose the information, but to refer the confidential commercial information to FSIS in order for FSIS to respond to the request for information; and

(2) The Administrator of FSIS or designee determines that disclosure would be in the interest of public health.

(b) This provision does not authorize the disclosure to State or other Federal government agencies of trade secret information, unless otherwise provided by law or pursuant to an express written authorization provided by the submitter of the information.

(c) Information disclosed under this section is not a disclosure of information to the public. Disclosures made under this section do not waive any FOIA exemption protection.

Done in Washington, DC on September 13, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–24032 Filed 9–18–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 401/AK and 410/AQ 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 British Aerospace Model BAC 1–11 401/AK and 410/AQ airplanes. This proposal would require replacement of certain landing gear brake accumulators with improved accumulators. This action is necessary to prevent loss of hydraulic pressure and possible structural damage to the airplane due to failure of the accumulator. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–113–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–113–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. 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:

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 2000–NM–113–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. 2000–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model BAC 1–11 401/AK and 410/AQ airplanes. The CAA advises that corrosion has been found on the steel shell under the nameplate and in the threads beneath the end caps of certain landing gear brake accumulators. These accumulators had exceeded their original calendar life. Additionally, fatigue and stress corrosion may have weakened the end caps of the accumulator. Failure of the accumulator, if not corrected, could result in loss of hydraulic pressure and possible structural damage to the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin 32–PM6054, dated February 2000, which describes procedures for replacement of certain landing gear brake accumulators with accumulators that are fitted with end caps made from stress and corrosion resistant aluminum alloy. The improved accumulators also have increased wall thickness in the end caps, a higher strength shell, and corrosion prevention measures in the threads and under the nameplate and mounting straps. The service bulletin references Parker Service Bulletin 1356–653562–32–100, dated September 23, 1999, as an additional source of service information for accomplishment of the replacement.

Accomplishment of the actions specified in the British Aerospace service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require

accomplishment of the actions specified in the British Aerospace service bulletin described previously.

Cost Impact

The FAA estimates that 13 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 actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,940 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $130,000, or $10,000 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 2000–NM–113–AD.

Applicability: All Model BAC 1–11 401/AK and 410/AQ 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 loss of hydraulic pressure and possible structural damage to the airplane due to failure of the landing gear brake accumulator, accomplish the following:

Replacement

(a) Within 10 months after the effective date of this AD, replace any Parker landing gear brake accumulator having part number (P/N) 1356–653562 with an accumulator having P/N 1356–653562M2, in accordance with British Aerospace Service Bulletin 32–PM6054, dated February 2000.

Note 2: The British Aerospace service bulletin references Parker Service Bulletin 1356–653562–32–100, dated September 23, 1999, as an additional source of service information for accomplishment of the replacement.

Spares

(b) As of the effective date of this AD, no Parker landing gear brake accumulator having P/N 1356–653562 shall be installed on any airplane.

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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Issued in Renton, Washington, on September 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–24002 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B 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 Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require inspecting the connector on the refuel/defuel panel and the electrical connector on the illuminated placard to detect signs of fluid ingression or corrosion, and corrective actions. This action is necessary to prevent electrical shorts or arcing at the illuminated placard connector at the refuel/defuel panel, which could result in a potential ignition source for fuel vapors during fueling procedures. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–213–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–213–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft .. Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. 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:

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 2000–NM–213–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. 2000–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that electrical shorts and arcing can occur at the illuminated placard connector at the wing refuel/defuel panel on these airplanes. These electrical shorts are caused by fluid entering through the mounting hole to the unsealed illuminated placard connector. The illuminated placard is supplied with 28VDC power only when the refuel/defuel panel switch is selected to ON when the aircraft is on the ground during refueling or defueling. Electrical shorts or arcing at the illuminated placard connector at the refuel/defuel panel could result in a potential ignition source for fuel vapors during fueling procedures.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–28–022, dated February 25, 2000, which describes procedures for inspecting the electrical connector on the refuel/defuel panel and the electrical connector on the illuminated placard to detect signs of fluid ingression or corrosion, and corrective actions. The corrective actions involve accomplishing a sealing procedure, or a cleaning/sealing procedure, as applicable; and repair of corrosion on the refuel/defuel panel mounting plate. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–156, dated February 28, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, 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 bulletin described previously.

Cost Impact

The FAA estimates that 289 Model SAAB SF340A and SAAB 340B series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $69,360, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

SAAB Aircraft AB: Docket 2000–NM–213–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –159 inclusive; and Model SAAB 340B series airplanes, serial numbers –160 through –459 inclusive; certificated in any category; on which a refuel/defuel panel having part number 7239160–505 is installed.

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 electrical shorts or arcing at the illuminated panel connector at the refuel/defuel panel, which could result in a potential ignition source for fuel vapors during fueling procedures, accomplish the following:

Inspection and Corrective Actions

(a) Within 6 months after the effective date of this AD, inspect the electrical connector on the refuel/defuel panel and the electrical connector on the illuminated placard to detect signs of fluid ingression or corrosion; and accomplish applicable corrective actions (including a sealing procedure, a cleaning/sealing procedure, and repair of corrosion on the refuel/defuel panel mounting plate); in accordance with Saab Service Bulletin 340–28–022, dated February 25, 2000.

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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–156, dated February 28, 2000.

Issued in Renton, Washington, on September 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–24001 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–293–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 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 Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; a functional check of the micro switches; and re-rigging the cam, if necessary. This action is necessary to detect and correct improper rigging of the liftdumper micro switches, which could result in inadvertent extension of the liftdumpers during takeoff roll. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–293–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. 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:

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.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

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 2000–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. 2000–NM–293–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it received two reports of inadvertent liftdumper deployments during takeoff roll. In each case, the flight crew did not notice anything abnormal; however, the liftdumper deployment was noticed and reported by outside observers. Subsequent investigation revealed some minor irregularities, but failed to establish the exact cause.

Results of a special test program performed by Fokker Services B.V. revealed that, with the throttle levers in full forward position and the liftdumper system armed, the rollers of both 75 percent liftdumper micro switches ran off the end of the cam. This caused the liftdumpers to deploy when the (simulated) wheel speed exceeded 50 knots and to remain extended until liftoff. Under normal circumstances, when the throttle levers are moved beyond approximately 75 percent high pressure (HP) revolutions per minute (rpm), these cams activate the micro switches to prevent liftdumper extension.

Improper rigging of the liftdumper micro switches could result in inadvertent extension of the liftdumpers during takeoff roll.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F28/27–186, including Manual Change Notification MCNM F28–020, dated May 8, 2000. The service bulletin describes procedures for a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left- and right-hand sides of the pedestal; a functional check of the micro switches; and re-rigging the cam, if necessary. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 2000–073, dated May 31, 2000, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of 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 bulletin described previously.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,520, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

Fokker Services B.V.: Docket 2000–NM–293–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct improper rigging of the liftdumper micro switches, which could result in inadvertent extension of the liftdumpers during takeoff roll, accomplish the following:

Inspection and Functional Check

(a) Within 2 months after the effective date of this AD: Perform a one-time general visual inspection for proper rigging of the liftdumper micro switches installed in the left-and right-hand sides of the pedestal; and a functional check of the micro switches; as specified in Fokker Service Bulletin F28/27–186, including Manual Change Notification MCNM F28–020, dated May 8, 2000. Perform the inspection and the check in accordance with the Accomplishment Instructions of the service bulletin. If the micro switches are not rigged within the specifications provided in the service bulletin, prior to further flight, re-rig the cam in accordance with the service bulletin.

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 droplight, 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.''

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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2000–073, dated May 31, 2000.

Issued in Renton, Washington, on September 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–24000 Filed 9–18–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 00N–1463]

RIN 0910–AB78

Labeling Requirements for Systemic Antibacterial Drug Products Intended for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require that all systemic antibacterial drug products (i.e., antibiotics and their synthetic counterparts) intended for human use contain additional labeling information about the emergence of drug-resistant bacterial strains. The proposal reflects a growing concern in FDA and the medical community that overprescription and inappropriate use of systemic antibacterials has contributed to a dramatic increase in recent years in the prevalence of drug-resistant bacterial infections. The proposal is intended to encourage physicians to prescribe systemic antibacterials more judiciously and only when clinically necessary. The proposal is also intended to encourage physicians to counsel their patients about the proper use of such drugs and the importance of taking them exactly as directed.

DATES: Submit written comments by December 4, 2000. See section III of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gary K. Chikami, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20852, 301–827–2120.

SUPPLEMENTARY INFORMATION:

I. Background

Antimicrobial resistance among disease-causing bacteria represents a serious and growing public health problem in the United States and worldwide. Many bacterial species, including the species that cause pneumonia and other respiratory tract infections, meningitis, and sexually transmitted diseases, are becoming increasingly resistant to the antimicrobial drugs used to treat them. Several bacterial species have developed strains that are resistant to every approved antimicrobial drug, thus severely limiting the therapeutic options available for adequate treatment.

Antimicrobial resistance in bacteria is not a new problem. For as long as antimicrobial drugs have been widely available—over 50 years now—bacteria have demonstrated an ability to develop resistance by a number of mechanisms, such as antibiotic-degrading enzymes. Over the past several years, however, the incidence of resistance in both hospital- and community-acquired

infections has increased dramatically, making many common illnesses more difficult to treat than they were only 5 or 10 years ago.

The rise of resistance in the bacterium *Streptococcus pneumoniae* provides a good example. *S. pneumoniae* is a common cause of middle-ear and sinus infections, as well as several life-threatening illnesses, including pneumonia, bacteremia, and meningitis. Strains of *S. pneumoniae* that are resistant to penicillin were observed as early as the 1960's. Over the following two or three decades, however, the frequency of drug-resistant *S. pneumoniae* strains remained relatively low. Even at the beginning of the 1990's, only about 5 percent of isolates showed decreased susceptibility to penicillin (Ref. 1). But in the past few years, that number has risen dramatically. In fact, in some parts of the country, up to 40 percent of all *S. pneumoniae* isolates are now intermediately or highly penicillin resistant (Ref. 2).

In the hospital setting, antimicrobial resistance is a particularly important problem. Each year in the United States, about 2 million patients acquire an infection while receiving treatment in a health care setting (Ref. 3). According to the Centers for Disease Control and Prevention (CDC), approximately 70 percent of those infections that are bacterial in nature are resistant to at least one of the antimicrobial drugs that have traditionally been used to treat them (Ref. 4).

A. Factors Contributing to the Emergence of Resistance

Several factors contribute to the increasing prevalence of antimicrobial resistance. One of the most important is the overuse or inappropriate use of antimicrobial drugs. The amount of overuse is difficult to establish with accuracy; however, several studies have provided estimates that provide a picture of substantial overuse of these products. Office-based physicians in the United States write more than 100 million antibiotic prescriptions each year. According to the CDC, however, as many as half of those prescriptions—a total of 50 million—are inappropriate, being prescribed for the common cold and other viral infections, including influenza, against which antibiotics are not active (Ref. 5). A recent study of paid Medicaid claims for treatment of respiratory tract infections in Kentucky found that 60 percent of adults received antibiotics to treat the common cold (Ref. 6). A survey of the prescribing patterns of office-based physicians in the United States in 1992 found that approximately 12 million antibiotic prescriptions, or 21 percent of all antibiotic prescriptions to adults, were written to treat colds, upper respiratory tract infections, and bronchitis, even though over 90 percent of these diseases are caused by viruses on which antibacterial drugs would have no effect (Ref. 7).

A 1995 congressional report estimated that 25 to 35 percent of hospital patients receive antibiotics either to prevent infections associated with surgery or to treat disease (Ref. 8). Another study found that from 1980 to 1992, per capita consumption of antibacterial drugs remained relatively constant, but the total volume increased from 86 million to 110 million prescriptions (Ref. 9). Moreover, the pattern of drug use changed over this period, with increased use of broad-spectrum antimicrobial drugs such as cephalosporins and decreased use of narrow-spectrum drugs such as penicillins.

Inappropriate antibiotic prescriptions can have serious consequences. Antimicrobial use increases the selective pressure on bacteria to develop and spread resistant strains. Thus, the more an antimicrobial is used, the more likely it is that bacteria will develop resistance to it.

Incomplete treatment with antibiotics also leads to more rapid selection of resistant organisms (Ref. 10). Even when physicians properly prescribe antibiotics, antibiotic resistance is promoted when patients skip doses or do not complete the entire course of therapy. This is because suboptimal therapy may allow more resistant organisms to survive and spread in the community. Therefore, educating patients about how to take antibiotics is a necessary step in reducing antibiotic resistance (Ref. 11). Patients also need to be educated that antibiotics should not be used to treat viral illnesses.

B. Responding to the Resistance Problem

Bacterial resistance can be reduced by decreasing the use of antibacterial drugs. For example, in response to increased erythromycin resistance of Group A streptococci, Finland implemented a nationwide campaign in 1992 to reduce the use of macrolide antibiotics (the class of which erythromycin is a member). Finnish consumption of this class of drug declined by about 43 percent in the first year and it has remained at a reduced level. By 1996, erythromycin-resistant Group A streptococci had declined in Finland by almost 48 percent (Ref. 12).

Important steps in decreasing the prevalence of antibacterial resistance and slowing its future development and spread are to educate physicians and the public about the problem of antibiotic resistance and to encourage more judicious use of antimicrobial drugs. FDA believes that professional labeling can be used to accomplish these objectives. Therefore, FDA is proposing to require that the labeling for systemic antibacterial drug products include certain statements about the inappropriate use of antimicrobials and the link between inappropriate use and the emergence of drug-resistant bacterial strains. Under the proposal, the labeling would include the following reminders for physicians:

- Antibacterial drugs should only be used in situations where a bacterial infection is either proven or strongly suspected.
- The type of bacteria involved in an illness and its antimicrobial susceptibility pattern should generally be identified before an antibacterial is chosen.
- The antibacterial chosen should be targeted for the specific organism to be eradicated rather than opting for a more broad-spectrum drug.
- Antimicrobial therapy should be modified once microbiologic results (both pathogen involved and susceptibility patterns) are available.
- Patients should be counseled about the proper use of antibacterials and the importance of taking them only as directed.

C. Scope of the Proposal

The focus of this proposed rule is systemic antibacterial drug products. Bacteria, however, are not the only microorganisms that can develop resistance to the drugs designed to treat them. Viruses, fungi, and parasites have the same ability. Treatment of these infections raise some different and unique scientific and regulatory issues and the agency would like to receive comments on approaches for dealing with resistance problems that may exist for dealing with these situations. Similarly, the treatment of mycobacterial infections (e.g., tuberculosis or leprosy) raises unique issues and the drugs that are intended to treat these infections are not covered by this rule. The agency would also like to receive comments on approaches to dealing with these drugs as well. Finally, topical antibacterials and topical antiseptics are not covered by this proposal.

II. Description of the Proposed Rule

The proposed rule would amend part 201 (21 CFR part 201) by adding new § 201.24 requiring special labeling for all systemic drug products indicated to treat a bacterial infection, except a mycobacterial infection.

Proposed § 201.24(a) would require that at the beginning of the label, under the product name, the labeling must state that inappropriate use may increase the prevalence of drug resistant microorganisms and may decrease the effectiveness of the drug product and related antimicrobial agents, and that the drug product should be used only to treat infections that are proven or strongly suspected to be caused by susceptible microorganisms. Proposed § 201.24(b) would require that the ''Clinical Pharmacology'' section state that appropriate use of the drug product includes, where applicable, identification of the causative microorganism and determination of its susceptibility profile.

Proposed § 201.24(c) would require that the ''Indications and Usage'' section state that local epidemiology and susceptibility patterns of the listed microorganisms should direct initial selection of the drug product for the treatment of the listed indications and that because of changing susceptibility patterns, definitive therapy should be guided by the results of susceptibility testing of the isolated pathogens.

Proposed § 201.24(d) would require that the ''Precautions'' subsection entitled ''General'' state that inappropriate use may increase the prevalence of drug resistant microorganisms and may decrease the future effectiveness of the drug product and related antimicrobial agents. This subsection would also include a statement that the drug product should only be used to treat infections that are proven or strongly suspected to be caused by susceptible microorganisms.

Proposed § 201.24(e) would require that the ''Precautions'' subsection entitled ''Information for Patients'' state that patients should be counseled that the drug product should be used only to treat bacterial infections and that it does not treat viral infections. The subsection would also advise physicians to counsel patients that the medication should be taken exactly as directed.

III. Effective Date and Proposed Implementation Plan

FDA proposes that any final rule based on this proposed rule become effective 1 year after the date of its publication in the **Federal Register**. After that date, new drug applications (NDA's) submitted under 21 CFR 314.50 and abbreviated new drug applications (ANDA's) submitted under 21 CFR 314.94 for systemic antibiotic drug products intended for human use (except those intended to treat mycobacterial infections) would have to comply with the labeling requirements under proposed § 201.24. Holders of approved NDA's or ANDA's would be encouraged to make the labeling changes prior to the effective date of the final rule and would submit supplements that do not require preapproval under 21 CFR 314.70(c) or 21 CFR 314.97. Holders of pending applications would submit amendments under 21 CFR 314.60 or 21 CFR 314.96. To streamline the agency's review, these supplements and amendments would include only the labeling changes proposed in this rulemaking.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in the two statutes cited above. The proposed rule would amend the content of the professional labeling for human prescription antibacterial drugs. Based on the analysis below, as summarized in table 1, FDA projects the annualized costs of complying with the proposed changes to be approximately $0.5 million. The agency also finds that if the proposed rule reduced the excess medical and productivity costs associated with antibacterial resistance by just 1 percent, the annual benefits would exceed $4 million. While FDA has determined that the proposed rule is a ''significant regulatory action'' as defined in section 3(f)(4) of Executive Order 12866, the proposed rule is not an economically significant rule as described in the Executive Order, because the annual impacts on the economy are substantially below $100 million. With respect to the Regulatory Flexibility Act, the agency certifies that this proposed rule will not have a significant effect on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

TABLE 1.—SUMMARY OF QUANTIFIABLE BENEFITS AND COSTS ($ MILLION)

Benefits and Costs	One-Time	Annual	Total Annualized
Benefits[1]			
Avoided cost of hospital infections		3.75	3.75
Indirect cost of longer hospital stays		0.43	0.43
Total Benefits		4.18	4.18
Costs			
One-time labeling revision	1.95		0.28

TABLE 1.—SUMMARY OF QUANTIFIABLE BENEFITS AND COSTS ($ MILLION)—Continued

Benefits and Costs	One-Time	Annual	Total Annualized
Annual incremental printing cost		0.03	0.03
Annual PDR costs		0.15	0.15
Total Costs	1.95	0.18	0.46

[1] Assumes medical and productivity costs now attribute to antibacterial resistance are reduced by 1 percent.

A. Benefits

Bacterial resistance to antibacterial drugs directly affects health care costs by requiring the use of newer and more expensive drugs and by requiring longer treatment and hospitalization periods for patients infected by resistant bacteria. Moreover, many disease-producing bacteria adapt to environmental changes and develop resistance to new drugs within a few years of widespread use thereby reducing the effectiveness of new drug therapies (Ref. 13). The societal costs of the infections from these resistant bacteria include both the direct costs for additional drugs and medical care and the indirect costs of lost productivity for patients with extended illness and increased mortality.

1. Direct Costs of Bacterial-Resistant Infections

Most studies on the cost of hospital infections in the United States have not separated infections caused by resistant bacteria from those caused by susceptible bacteria. Researchers from the CDC, examining summary reports of outbreak investigations for 1971 through 1980, as well as published and unpublished reports of infections caused by bacteria with known antibacterial resistance, found that infections from resistant bacteria were typically associated with substantially longer hospital stays. The examined studies, however, had too few subjects to allow statistical analysis (Ref. 14).

Two studies of urban hospitals in the northeastern United States have directly compared the costs of infections caused by resistant and susceptible bacteria. In the first study, using hospital discharge data from hospitals in New York City, researchers modeled differences between infections caused by methicillin-resistant *Staphylococcus aureus* (MRSA) and those caused by methicillin-sensitive *Staphylococcus aureus* (MSSA). They estimated that each MRSA infection costs an additional $2,500 in direct medical costs and longer hospital stays (Ref. 15). The death rate attributable to the MRSA infection was more than double that of MSSA infections (i.e., 21 percent versus 8 percent).

In the second study, conducted at a Boston hospital, researchers examined the economic impact of antibiotic resistance in Pseudomonas aeruginosa (Ref. 16). This study compared the mortality rate, length of stay, and costs for three groups: (1) Patients with susceptible bacteria, (2) patients with some baseline resistant bacteria, and (3) patients with resistance that emerged while hospitalized. Daily hospital charges of $2,059 were the same for all three groups. Furthermore, length of stay and mortality rate were similar for patients infected with susceptible bacteria and those with baseline resistant bacteria. However, patients in which resistant bacteria emerged during hospitalization incurred additional costs of $7,340 for 3.5 extra days and had a 250 percent higher mortality rate (27 percent versus 7.7 percent).

The total number of annual infections caused by resistant bacteria is uncertain. Although diagnosis codes exist for infections with drug-resistant microorganisms, they are intended only to supplement other codes for infectious conditions and may not always be included in patient data. As a result, these hospital patient records may provide only an estimate of the minimum number of cases of drug-resistant infections in a given year. The U.S. National Center for Health Statistics publishes annual estimates of the number of diagnoses (by diagnosis code) in nonFederal short-stay hospitals from the National Hospital Discharge Survey (NHDS). For 1995 and 1997, respectively, NHDS estimates suggest about 18,000 and 43,000 cases of infections by resistant microorganisms (Refs. 19 and 20). Data from a larger national sample of hospital patients by the Healthcare Cost and Utilization Project estimate 84,000 diagnoses of resistant infections in community hospitals for 1997 (Ref. 21). Moreover, CDC hospital surveillance data of 5 known strains of resistant bacteria for 1995 suggest a much higher figure, projecting approximately 279,000 cases (Ref. 17). For this analysis, FDA has assumed the average of the 1995 data, or that 150,000 hospital acquired infections per year are attributable to resistant bacteria. Thus, assuming that patients incur additional hospital charges of $2,500 per resistant infection, the total hospital cost attributable to antibacterial resistance is estimated at $375 million annually.

2. Indirect Costs of Bacterial-Resistant Infections

In addition to direct medical costs, patients also incur indirect costs from lost productivity due to resistant bacterial infections. FDA does not know how long a typical hospital stay is extended due to antibacterial resistance. However, if just 1 extra day were needed for relatively simple cases, at an average hourly wage of $16 including benefits, each case would cost about $128 in lost productivity. For cases where few alternatives are effective against the disease-causing bacteria, as with*Pseudomonas*, patients might need an additional 3.5 days in the hospital, with lost productivity cost of about $448 per patient. Assuming the mean of these two estimates, 150,000 cases of resistant bacterial infections would cost the economy about $43 million per year in lost productivity.

3. Reduced Direct and Indirect Costs

In 1997, about 110 million antibacterial prescriptions were written by office-based physicians in the United States (Ref. 18), of which as many as half may have been inappropriate according to the CDC. The proposed rule would alter the professional labeling of these drugs to add concise information relating to the public health risks associated with their inappropriate use. The revised labeling would notify and remind physicians of these risks and prompt physicians to dissuade patients from using antibacterial drugs for diseases not caused by bacteria. These changes are expected to decrease the unnecessary consumption of antibacterial drugs and, in turn, to diminish the growth of antibacterial resistant bacteria. Although FDA cannot quantify the likely magnitude of these effects, if the proposed changes serve to avoid even 1 percent of the above estimated costs of antibacterial resistance, the potential hospital cost savings would amount to $3,750,000 per year in direct costs and $430,000

annually in indirect costs, for a total that exceeds $4 million annually. Moreover, the societal benefits of this rulemaking would be much higher than the economic cost savings because these figures do not include the value of reduced mortality or the benefits of decreasing the rate of development of resistant organisms over time.

B. Costs of Regulation

The proposed rule would require that labeling of systemic antibacterial drug products include information about the inappropriate use of antimicrobial drugs and the link between inappropriate use and the emergence of drug-resistant bacterial strains. The proposed implementation plan would require that labeling for affected prescription drug products comply with the proposed requirements within 1 year after the effective date of the final rule.

1. Affected Products

The proposed rule would affect all systemic antibacterial drug products except those primarily indicated to treat a mycobacterial infection. Antifungal, antiviral, antiparasitic, and topical antimicrobial products would not be subject to the labeling requirements of this proposed rule. Of the approximately 5,300 marketed prescription drug products in the United States, FDA estimates that 737 are antibiotic products, of which 89 are topical products excluded from these requirements.[1] The agency estimates that an additional 113 systemic antibacterial drug products would be required to conform to the labeling requirements.[2] Thus, a total of 761 drug products may be affected by the proposed rule (table 2).

TABLE 2.—NUMBER OF AFFECTED PRODUCTS

Type of Antibacterial Drug Product[1]	Number of Products
Antibiotics with 50,000 or 60,000 series NDA numbers	
Aminoglycosides	83
Cephalosporins	112
Miscellaneous Beta-Lactam Antibiotics	16
Chloramphenicol	17
Macrolides	56
Penicillins	148
Tetracyclines	75
Miscellaneous Antibiotics[2]/Combination Drugs[3]	141
Other antibacterial drug products	
Quinolones	24
Sulfonamides/Sulfones	38
Urinary Anti-Infective Drugs	18
Miscellaneous Anti-Infectives	33
Total number of affected drug products	761

[1] Excludes antifungal drug products, topical drug products, and antibacterial drug products intended to treat a mycobacterial infection.
[2] Includes 42 drug products with active ingredient(s) not on the AHFS list of antibiotics.
[3] Combination drugs contain more than one antibacterial active ingredient.

2. Professional Labeling Design Costs

Industry consultants estimate that, on average, prescription drug manufacturers would incur about $2,000 per product in design and implementation costs for a major revision in the content of professional labeling. Because changes must be made within 1 year of the effective date of the final rule, not all firms will have sufficient time to deplete their inventories of professional labeling. With a 12-month implementation period, consultants estimate per product inventory losses of approximately $570. Thus, including excess inventory losses, the cost to change professional labeling is estimated at $2,600 per product. In the first year, therefore, firms may incur one-time costs of about $2 million.

3. Incremental Printing Costs for Professional Labeling

FDA estimates that an average of 100,000 package inserts may be printed annually for each prescription drug product marketed in the United States.[3] Adding new information about prudent use of antibacterial drug products to professional labeling may increase the size of current package inserts by about 4 percent. With such a small change in the length of professional labeling (i.e., 0.4 inch for the average insert), it is unlikely that many package inserts would actually change size. Nevertheless, industry consultants estimate the cost of printing larger labels to be $0.0086 per 100 square inches. Therefore, if the affected products incurred additional printing costs for longer labeling, an estimated $35 per affected product[4] would imply incremental printing costs of less than $30,000 annually.

4. Physicians' Desk Reference (PDR) Costs

The agency estimates that up to 190 products may need slightly longer PDR listings.[5] According to its publisher, a printed page in the PDR cost $8,000 in 1998. The additional language would add approximately one-tenth of a page to an average PDR listing, costing $800 per product.[6] The annual costs of

[1] Derived from FDA's *Approved Drug Products with Therapeutic Equivalence Evaluations*, 1998. Products counted had NDA numbers in the 50,000 or 60,000 series (i.e., antibiotics) and a distinct dosage form or manufacturer. This number, however, may overestimate the number of antibiotic products with distinct labeling.

[2] Derived from FDA's *Approved Drug Products with Therapeutic Equivalence Evaluations*, 1998; and from the 1999 Drug Information, American Hospital Formulary Service (AHFS). Products counted had NDA numbers not in the 50,000 or 60,000 series, active ingredients matching the AHFS list of antibacterial agents, and a distinct manufacturer, active ingredient, or dosage form. Topical dosage forms were excluded.

[3] In 1996, there were approximately 133 million prescriptions for antibacterial drugs written by physicians in office and hospital settings (General Accounting Office (GAO) 1999). An estimated 45.3 million inserts accompanied these 761 drug products, or an average of 59,500 inserts per antibacterial product (45.3 million ÷ 761 products). Moreover, an assumed 40,000 additional inserts per product may be distributed annually by sales representatives as promotional material.

[4] $34.40 = 100,000 inserts/product x $0.000086/square inch x 4 square inches.

[5] 190 products is the rounded up estimate from the following calculation: 761 (drug products affected by proposed rule) x .32 (percentage of those products manufactured by innovators) x .75 (percentage of innovator products listed in PDR) = 182.

[6] $800 per product = $8,000/page x 1/10 page.

printing the larger labels in the PDR, therefore, would increase by $0.15 million.

Over 10 years, the agency estimates that the annualized compliance costs of the proposed rule would be approximately $455,000. These costs are summarized in table 3.

TABLE 3.—COSTS TO REVISE PROFESSIONAL LABELING AND INCREMENTAL PRINTING COSTS

	One-Time Labeling Revision Costs	Annual Incremental Printing Costs	Annual PDR Costs
Per product cost	$2,558	$35	$800
Number of affected products	761	761	190
Total	$1,946,638	$26,178	$152,000
Total annualized costs[1]	$277,162	$26,178	$152,000

[1]One-time costs are annualized over 10 years at 7 percent.

C. Impacts on Small Entities

The proposed rule would affect manufacturers of systemic antibacterial drug products. There are 600 pharmaceutical manufacturers in the United States. The Small Business Administration (SBA) considers firms with fewer than 750 employees to be small. As seen in table 4 below, Census data classify firms in size categories that do not permit a precise determination of the number of pharmaceutical firms that have fewer than 750 employees. However, Census data do show that more than 90 percent of pharmaceutical manufacturers have fewer than 500 employees, and thus are small businesses.[7]

Approximately 125 large and small firms manufacture systemic antibacterial drug products and thus would be affected by the proposed rule. The estimated annualized costs of $600 per product[8] are relatively modest for most manufacturers of antibiotic drugs. Therefore, the impact of the proposed rule would be significant only for those firms that manufacture many affected products. FDA reviewed the list of approved products[9] and identified only four small domestic firms that manufacture more than three antibiotic products.[10] Table 4 compares the estimated costs of compliance to reported average annual sales revenues for pharmaceutical firms of varying sizes. Because almost all manufacturers of antibiotic products in the United States have over 10 employees, the next to the last column of the table shows that these annualized costs are less than one-tenth of one percent of sales revenues. As a result, FDA certifies that this proposed rule would not have a significant adverse effect on a substantial number of small entities.

TABLE 4.—EXAMPLES OF ANNUALIZED AND FIRST-YEAR COSTS TO MODIFY PROFESSIONAL LABELING AS A PERCENTAGE OF AVERAGE ANNUAL SHIPMENT VALUE BY NUMBER OF EMPLOYEES[1]

Number of Employees	Number of Establishments	Value of Shipments (mil$)	Average Annual Per Establishment Shipment Value (mil$)	Annualized Cost to Modify One Product as a Percentage of Shipment Value[2]	Annualized Cost to Modify Two Products as a Percentage of Shipment Value[2]	Annualized Cost to Modify Three Products as a Percentage of Shipment Value[2]	First-Year Costs to Modify Three Products as a Percentage of Shipment Value[3]
Small Businesses By SBA Size Standards (fewer than 750 employees)							
1–4	152	$115.60	$0.76	0.08%	0.16%	0.24%	1.10%
5–9	73	$105.40	$1.44	0.04%	0.08%	0.12%	0.58%
10–19	101	$284.60	$2.82	0.02%	0.04%	0.06%	0.30%
20–49	110	$815.70	$7.42	0.01%	0.02%	0.02%	0.11%
50–99	65	$1,966.80	$30.26	0.00%	0.00%	0.01%	0.03%
100–249	77	$2,912.40	$37.82	0.00%	0.00%	0.01%	0.02%
250–499	56	$11,394.60	$203.48	0.00%	0.00%	0.00%	0.00%
500–999	30	$10,077.70	$335.92	0.00%	0.00%	0.00%	0.00%
Large Businesses by SBA Size Standards (750 or more employees)							
1,000–2,499	21	$14,525.70	$691.70	0.00%	0.00%	0.00%	0.00%
2,500 +	6	$8,219.40	$1,369.90	0.00%	0.00%	0.00%	0.00%

[1]U.S. Department of Commerce, Bureau of the Census,*1992 Census of Manufactures, Industry Series*, Drugs, MC92–1–28C.
[2]Average annualized per product costs = $598
[3]Average first-year per product costs = $2,792

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule does not require information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Public Law 104–13).

[7] U.S. Department of Commerce, Bureau of the Census,*1992 Census of Manufactures*, Industry Series, Drugs, MC92–1–28C.

[8] Total annualized costs per product: $277,162 + $26,178 + $152,000 = $455,336. Average annualized costs: $455,336/761 = $598.34.

[9] FDA's*Approved Drug Products with Therapeutic Equivalence Evaluations*, 1998.

[10] These four small firms manufacture 6, 6, 7, and 13 products respectively.

FDA is proposing to amend its labeling regulations to require that the labeling for systemic antibacterial drug products include certain statements, specified by FDA, about the inappropriate use of antimicrobials and the link between such inappropriate use and the emergence of drug-resistant bacterial strains. These labeling statements are not subject to review by OMB because they are ''originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995.

Holders of approved NDA's and ANDA's would be required to submit supplements and holders of pending NDA's and ANDA's would be required to submit amendments to comply with the new labeling requirements. The proposed rule would also require that all new NDA's and ANDA's for systemic antibacterial drug products comply with the new labeling requirements. FDA regulations governing the submission and approval of NDA's and ANDA's, including the submission of product labeling, are in part 314 (21 CFR part 314). Recordkeeping and reporting requirements included in part 314 are approved by OMB until November 30, 2001, under OMB control number 0910–0001.

VII. Federalism

FDA has analyzed this proposed rule in accordance with Executive Order 13132. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt existing State law. As defined in the Order, ''policies that have federalism implications'' refers to regulations, legislative comments on proposed legislation, and other policy statements or actions 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.

The proposal would revise current regulations to require that all systemic antibacterial drug products (i.e., antibiotics and their synthetic counterparts) intended for human use contain additional labeling information about the emergence of drug-resistant bacterial strains. Because enforcement of these labeling provisions is a Federal responsibility, there should be little, if any, impact from this rule, if finalized, 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. In addition, FDA does not believe that this proposed rule preempts any existing State law.

Accordingly, FDA has determined that this proposed rule does not contain policies that have federalism implications.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by December 4, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Centers for Disease Control, ''Drug-Resistant Streptococcus Pneumoniae—Kentucky and Tennessee, 1993,'' *Journal of American Medical Association*, vol. 271, pp. 421–422, 1994.

2. Centers for Disease Control, ''Summary of Notifiable Diseases, United States, 1998,'' *Morbidity and Mortality Weekly Report*, 47 (53), December 31, 1999.

3. Centers for Disease Control, ''Public Health Focus: Surveillance, Prevention and Control of Nosocomial Infections,'' *Morbidity and Mortality Weekly Report*, vol. 41, pp. 783–787, 1992.

4. Fridkin, S., S. F. Welbel, and R. A. Weinstein, ''Magnitude and Prevention of Nosocomial Infections in the Intensive Care Unit,'' *Infectious Disease Clinics of North America*, vol. 11, pp. 479–495, 1997.

5. Centers for Disease Control, and American Academy of Pediatrics, edited by S. F. Dowell, ''Principles of Judicious Use of Antimicrobial Agents for Pediatric Upper Respiratory Tract Infections,'' Supplement to *Pediatrics*, vol. 101, pp. 163–164, January 1998.

6. Mainous, A. G., III, W. J. Hueston, and J. R. Clark, ''Antibiotics and Upper Respiratory Infection. Do Some Folks Think There Is a Cure for the Common Cold?,'' *The Journal of Family Practice*, vol. 42, pp. 357–361, 1996.

7. Gonzales, R., J. F. Steiner, and M. A. Sande, ''Antibiotic Prescribing for Adults with Colds, Upper Respiratory Tract Infections, and Bronchitis by Ambulatory Care Physicians,'' *Journal of American Medical Association*, vol. 278, pp. 901–904, 1997.

8. U.S. Congress, Office of Technology Assessment, *Impacts of Antibiotic-Resistant Bacteria*, OTA–H–269, U.S. Government Printing Office, Washington, DC, 1995.

9. McCaig, L. F., and J. M. Hughes, ''Trends in Antimicrobial Drug Prescribing Among Office-Based Physicians in the United States,'' *Journal of American Medical Association*, vol. 273, pp. 214–219, 1995.

10. World Health Organization, *Overcoming Antimicrobial Resistance*, WHO Report on Infectious Diseases, 2000, p. 27.

11. WHO Report, pp. 55–56.

12. Seppala, H. et al., ''The Effect of Changes in the Consumption of Macrolide Antibiotics on Erythromycin Resistance in Group A Streptococci in Finland,'' *The New England Journal of Medicine*, vol. 337, pp. 441–446, 1997.

13. Wenzel, R. P., and M. T. Wong, ''Editorial Response: Managing Antibiotic Use—Impact of Infection Control,'' *Clinical Infectious Diseases*, vol. 28, pp. 1126–1127, 1999.

14. Holmberg, S. D., S. L. Solomon, and P. A. Blake, ''Health and Economic Impacts of Antimicrobial Resistance,'' *Reviews of Infectious Diseases*, vol. 9, pp. 1065–1078, 1987.

15. Rubin, R. J. et al., ''The Economic Impact of*Staphylococcus Aureus* Infection in New York City Hospitals,'' *Emerging Infectious Diseases*, vol. 5, pp. 9–17, 1999.

16. Carmeli, Y. et al., ''Health and Economic Outcomes of Antibiotic Resistance in *Pseudomonas Aeruginosa*,'' *Archives of Internal Medicine*, vol. 159, pp. 1127–1132, 1999.

17. U.S. General Accounting Office Report, ''Antimicrobial Resistance: Data to Assess Public Health Threat from Resistant Bacteria Are Limited,'' GAO/HEHS/NSIAD/RCED–99–132, pp. 5–6, April 1999.

18. GAO Report, p. 16.

19. Graves, E. J., and B. S. Gillum, ''Detailed Diagnoses and Procedures, National Hospital Discharge Survey, 1995,'' National Center for Health Statistics Vital Health Statistics Series 13 (130):115.

20. Owings, M. F., and L. Lawrence, ''Detailed Diagnoses and Procedures, National Hospital Discharge Survey, 1997,'' National Center for Health

Statistics Vital Health Statistics Series 13 (145):118.

21. HCUPnet, Healthcare Cost and Utilization Project, Agency for Healthcare Research and Quality, Rockville, MD (http://www.ahrq.gov/data/hcup/hcupnet.htm).

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Add § 201.24 to subpart A to read as follows:

§ 201.24 Labeling for systemic antibacterial drug products; required statements.

The labeling of all systemic drug products indicated to treat a bacterial infection, except a mycobacterial infection, must bear the following statements:

(a) At the beginning of the label, under the product name, the labeling must state:

Inappropriate use of (*insert name of antibacterial drug product*) may increase the prevalence of drug resistant microorganisms and may decrease the effectiveness of (*insert name of antibacterial drug product*) and related antimicrobial agents.

Use (*insert name of antibacterial drug product*) only to treat infections that are proven or strongly suspected to be caused by susceptible microorganisms. See Indications and Usage section.

(b) In the ''Clinical Pharmacology'' section, the labeling must state:

Appropriate use of (*insert name of antibacterial drug product*) includes, where applicable, identification of the causative microorganism and determination of its susceptibility profile.

(c) In the ''Indications and Usage'' section, the labeling must state:

Local epidemiology and susceptibility patterns of the listed micro organisms should direct initial selection of (*insert name of antibacterial drug product*) for the treatment of the indications listed below. Because of changing susceptibility patterns, definitive therapy should be guided by the results of susceptibility testing of the isolated pathogens.

(d) In the ''Precautions'' section, under the ''General'' subsection, the labeling must state:

Inappropriate use of (*insert name of antibacterial drug product*) may increase the prevalence of drug resistant microorganisms and may decrease the future effectiveness of (*insert name of antibacterial drug product*) and related antimicrobial agents.

(*Insert name of antibacterial drug product*) should only be used to treat infections that are proven or strongly suspected to be caused by susceptible microorganisms. See Indications and Usage section.

(e) In the ''Precautions'' section, under the ''Information for patients'' subsection, the labeling must state:

Patients should be counseled that (*insert name of antibacterial drug product*) should only be used to treat bacterial infections. It does not treat viral infections (e.g., the common cold).

Patients should also be told that the medication should be taken exactly as directed. Skipping doses and not completing the full course of therapy may (1) decrease the effectiveness of the immediate treatment and (2) increase the likelihood that bacteria will develop that will not be treatable by (*insert name of antibacterial drug product*) in the future.

Dated: August 25, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–24007 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Address Sequencing Service

AGENCY: Postal Service.

ACTION: Proposed rule with request for comment.

SUMMARY: This proposed rule amends section A920 of the Domestic Mail Manual (DMM) to enhance customer service and to provide notice of new safeguards to protect the ownership of customer address lists.

DATES: Comments must be received on or before October 19, 2000.

ADDRESSES: Written comments should be sent to Manager, Address Management, USPS, 6060 Primacy Pkwy, Ste 201, Memphis, TN 38188–0001. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: DeWitt Crawford, (901) 681–4612, or Susan Hawes, (901) 681–4661.

SUPPLEMENTARY INFORMATION: The manual address card sequencing process that has been available for many years has become too labor intensive and expensive for some mailers to maintain. An increasing number of customers have requested the adoption of a more efficient and cost-effective procedure for the sequencing of address lists. In response, the USPS is proposing an electronic address sequencing service for those customers who want to discontinue the production and processing of manual address cards. This proposal is an outgrowth of meetings the USPS conducted with saturation mailer groups and the Mailers Technical Advisory Committee (MTAC).

To ensure the integrity of the qualification process for the electronic sequencing service, all USPS-qualified walk sequence address files will contain seeded addresses known only to the list owner and the USPS. This will help guard against the fraudulent submission of rented lists for qualification. If a request for sequencing contains a seeded address, and all known possibilities of fraud cannot be ruled out, the request will be denied and the owner of the seeded address and the Postal Inspection Service will be notified. Notification will include requester's company name, ZIP Code, and level of address group requested for qualification.

Customers will be allowed three attempts to qualify a ZIP Code within a six-month period. Failure to qualify within this time frame will result in a suspension of one year from further attempts to qualify the ZIP Code.

To protect the integrity of customer address lists, and to add a level of security, all customer requests for DMM A920 card and electronic processing will be posted for 90 days on a password-secured USPS Address Sequencing Service Web site. Company name, ZIP Code, and requested address groups will be listed. This will enable USPS-qualified list owners to monitor possible misuse of their rented or leased address lists. Only USPS-qualified list owners will be able to access the Web site.

Summary of Proposed Change

Proposed DMM sections A920.1.0 through A920.6.4 provide an electronic address sequencing service for those customers who want to discontinue the production and processing of manual address cards.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following section of the Domestic Mail Manual (DMM) as follows:

A Addressing

* * * * *

A900 Customer Support

* * * * *

A920 Address Sequencing Services

[Amend 1.0 to add electronic file options to read as follows:]

1.0 SERVICE LEVELS

The USPS provides the following levels of manual or electronic address sequencing service for city carrier routes, rural routes, highway contract routes, and post office box sections:

a. Sequencing of address cards or electronic address files.

b. Sequencing of address cards or electronic address files, plus inserting blank cards for missing addresses or missing sequence numbers for the addresses missing from the electronic files.

c. Sequencing of address cards or electronic address files, plus inserting cards with addresses for missing or new addresses, or inserting addresses into electronic files for missing or new addresses.

[Revise the heading of 2.0 to read as follows:]

2.0 CARD OR FILE PREPARATION AND SUBMISSION

[Revise 2.1 to read as follows:]

2.1 Color and Size

When submitting cards, all address cards must be made of white or buff-colored card stock and identical in size (5 to 8 5/16 inches long and 2 1/4 to 4 1/4 inches high). Blank cards for missing and/or new addresses must be of the same size as the submitted address cards but of a different color. A customer must provide enough blank cards to equal at least 10 percent of the number of address cards submitted.

[Revise 2.2 to read as follows:]

2.2 Limitation

The customer must not submit address cards or an address file in excess of 110 percent of the possible deliveries for a specific 5-digit ZIP Code delivery area. Customers requesting the service level in A920.1.0c will be allowed three attempts to qualify a ZIP Code for the service within a 6-month period. Failure to qualify within 6 months will result in a suspension of 1 year for any additional attempts to qualify the ZIP Code.

[Revise 2.3 to read as follows:]

2.3 Addressing Format

Addressing format is specific to the media being used.

a. Card Processing—Cards must be faced in the same direction and bear only one address each. The customer's current address information must be computer-generated, typed, or printed along the top of the card. The address must be within 1 inch from the top edge of the card in about the same location on each card submitted. Each card must include a complete address except for the ZIP Code, which is optional. Street designators may be abbreviated as shown in Publication 28, Postal Addressing Standards. When sequence cards are used to obtain address sequencing information for post office boxes, the box section number must be substituted for the carrier route number (if shown).

b. Electronic Processing—The customer must submit address files on electronic media, as described by the USPS. Call the National Customer Support Center at 800–331–5747 for a copy of the required format.

[Revise the first sentence of 2.4 and add second sentence to read as follows:]

2.4 Header Cards

When submitting address cards customers must provide carrier route header cards, prepared with standard 80-column computer card stock (or another size as described above). The header cards must be typed, computer-generated, or printed by the customer. * * *

[Revise 2.5 to read as follows:]

2.5 Delivery Unit Summary

A Delivery Unit Summary must be typed, computer-generated, or printed and provided by the customer for card processing. A printed copy or electronic file will be acceptable for address file submissions. When submitting address cards, an original and two copies must be submitted for each 5-digit ZIP Code delivery area. When submitting an address file, an original and two copies of a printed form or one electronic file must be submitted for each 5-digit ZIP Code delivery area. This form, used by the USPS to provide summary information to the customer, is necessary for calculating total charges for the service level provided. The original is returned to the customer with the cards as the customer's bill. Examples of the required format for the Delivery Unit Summary can be obtained from the National Customer Support Center (see G043).

[Revise the first sentence of 2.6 to read as follows:]

2.6 5-Digit ZIP Codes

When submitting address cards, the cards for each 5-digit ZIP Code area must be placed in separate containers, each with an envelope affixed containing a packing list and Delivery Unit Summary sheets for that 5-digit ZIP Code area. * * *

[Revise 2.7 to read as follows:]

2.7 Submitting Cards or Electronic Files

The designated place for submission of addresses for sequencing depends on the type of media used.

a. Card Processing—The customer must submit the containers of address cards to the district manager of Address Management Systems for carrier routes within the corresponding district. (Exception: Address cards only for addresses in the city where the customer is located may be submitted to the postmaster of that city for sequencing and correction.) Unless otherwise directed, the customer must address containers of address cards to:

MANAGER ADDRESS MANAGEMENT SYSTEMS
UNITED STATES POSTAL SERVICE
[STREET ADDRESS]
[CITY/STATE/ZIP+4]

b. Electronic Processing—The customer must submit address files on electronic media, as described by the USPS, to:

COMPUTERIZED DELIVERY SEQUENCING DEPARTMENT
NATIONAL CUSTOMER SUPPORT CENTER
UNITED STATES POSTAL SERVICE
6060 PRIMACY PKWY STE 201
MEMPHIS TN 38188–0001

[Revise 2.8 by adding the following after the first sentence:]

2.8 Postage

* * * Address files can be mailed at the appropriate rate or be electronically transmitted, as determined by the USPS, to the National Customer Support Center. * * *

[Revise 2.9 to read as follows:]

2.9 USPS Sequencing

Unsequenced address cards received at post offices or unsequenced address

files received at the National Customer Support Center will be arranged in sequence of carrier route delivery without charge. Cards with incorrect or undeliverable addresses are removed from carrier route bundles, bundled separately, and returned to the customer. When address files are submitted, incorrect or undeliverable addresses are removed from the original file and returned as a separate file.

[Revise the heading and first sentence of 2.10 to read as follows:]

2.10 USPS Time Limits and Billing

The post office or the National Customer Support Center, whichever performs the service, returns the cards or address file and the bill for applicable charges to the customer within 15 working days after receiving a properly prepared request for address sequencing. This time limit does not apply to cards received between November 16 and January 1, which are sequenced as promptly as possible.

* * *

[Revise 2.11 to read as follows:]

2.11 Seasonal Addresses

Under all service levels, correct addresses subject to seasonal occupancy, but which do not indicate seasonal treatment, will be identified with an ''S'' on cards or a flag on address files. If the address is included in a series such as those used for apartment buildings, trailer parks, and seasonal delivery areas in general, the appropriate ''seasonal'' indicator box is checked on the card or flagged on the address file. When correct address cards or address files are submitted that are not subject to seasonal occupancy, but include seasonal treatment notations, the seasonal indicator is marked out on cards or left blank on address files. For cards, a rubber band is placed around the card to identify it before it is put in carrier route sequence order in the returned deck of cards. No charge is assessed for this service.

[Revise the heading of 3.0 to read as follows:]

3.0 SEQUENCING CARDS WITH BLANKS FOR MISSING ADDRESSES OR SEQUENCING ADDRESS FILES WITH MISSING SEQUENCE NUMBERS

[Revise 3.1 to read as follows:]

3.1 USPS Sequencing

USPS employees at post offices (for cards) or the National Customer Support Center (for address files) arrange unsequenced addresses in sequence of carrier route delivery without charge and remove incorrect or undeliverable addresses. Cards are bundled separately for return to the customer, with blank cards inserted for each existing address that is not included in the customer's cards. Address files are returned with missing sequence numbers inserted. (If several addresses in a series are missing, a single blank card is inserted for the series showing the number of missing addresses. For address files a series of missing sequence numbers is inserted identifying the number of missing addresses.)

[Revise 3.2 to read as follows:]

3.2 USPS Time Limits and Billing

The post office or the National Customer Support Center, whichever performs the service, returns the cards or address file along with a bill for applicable charges to the customer within 15 working days after receiving a properly prepared request for address sequencing. This time limit does not apply to cards received between November 16 and January 1, which are sequenced as promptly as possible.

[Revise heading of 4.0 to read as follows:]

4.0 SEQUENCING WITH ADDRESS CARDS OR ADDRESS FILE WITH ADDRESSES ADDED FOR MISSING AND NEW ADDRESSES

[Revise 4.1 to read as follows:]

4.1 USPS Sequencing

USPS employees at post offices (for cards) or the National Customer Support Center (for address files) arrange unsequenced addresses in sequence of carrier route delivery without charge and remove incorrect or undeliverable addresses. New or missing addresses (including rural address conversions to city delivery) are added for each existing address that is not included in the customer's cards or address file. Cards are bundled separately for return to the customer. An address file is returned as a separate file.

[Revise 4.2 to read as follows:]

4.2 Separate Address Groups

Separate groups of address cards must be submitted for the addresses in each 5-digit ZIP Code delivery area: city carrier (residential addresses only); city carrier (business addresses only); city carrier (combination of residential and business addresses); rural and highway contract route addresses; or post office box addresses (whether business, residential, or a combination). If submitting an electronic address file, a single file meeting the same requirements is acceptable. Each group must be accompanied by a statement showing:

a. Types of addresses (i.e., residential, business, or a combination).

b. Number of addresses on the cards or in the address file.

c. Name, mailing address, and telephone number of the list owner or agent.

* * * * *

[Revise 4.4 to read as follows:]

4.4 Address Percentage

For the 5-digit ZIP Code area, the mailing list that the cards or address file represent must contain 90 percent of all possible residential or business city carrier addresses for addresses in the respective address group, 90 percent of all city carrier addresses for addresses in a combination residential/business address group, or 90 percent of all possible deliveries for addresses in rural/highway contract route and post office box groups.

* * * * *

[Revise the heading and the first sentence of 4.6 to read as follows:]

4.6 Resubmitting Cards or Address File

Customers must monitor community growth and determine when address cards or address files need to be submitted for resequencing to maintain the 90 percent eligibility level of address coverage.

5.0 SERVICE CHARGES

[Revise the first sentence of 5.1 to read as follows:]

5.1 Basic Service

For sequencing of address cards or address file, the applicable fee is charged for each address card or address that is removed because of an incorrect or undeliverable address. * * *

[Revise 5.2 to read as follows:]

5.2 Blanks for Missing Addresses

For sequencing of address cards or address file with total possible deliveries shown, the applicable fee is charged for each address card or address that is removed because it is incorrect or undeliverable. No charge is assessed for the insertion of blank cards or missing sequence numbers (for address files) showing the range of missing addresses in a submitted list.

[Revise the first sentence of 5.3 to read as follows:]

5.3 Missing or New Addresses

For sequencing of address cards or address file with missing or new addresses added, the applicable fee is charged for each address card or address that is removed because it is incorrect or undeliverable, and for each address

(possible delivery) that is added to the customer's list. * * *

* * * * *

[Amend 5.5 by revising paragraph a to read as follows:]

5.5 Free Services

* * * * *

a. If the customer includes a rural address (box number) in a deck of cards or address file submitted for sequencing, and a street address is assigned to that box number so it can be served on a city delivery route, a correct address card or address is included at no charge.

* * * * *

6.0 SUBMITTING PROPERLY SEQUENCED MAILINGS

[Revise the first sentence of 6.1 to read as follows:]

6.1 Customer Responsibility

The customer must ensure that mailings are prepared in correct carrier route delivery sequence and resequence cards or an address file when necessary. * * *

[Revise 6.2 to read as follows:]

6.2 Changes

If delivery changes occur that affect delivery sequence, but do not cause scheme changes, the customer is notified in writing and must then submit cards or an address file for the affected routes or the complete ZIP Code for resequencing.

[Revise the third sentence of 6.3 to read as follow:]

6.3 Out-of-Sequence Mailing

* * * If the customer does not take corrective action, the USPS gives written notice that the customer is no longer allowed to submit address cards to the post office or address files to the National Customer Support Center for sequencing. * * *

[Revise 6.4 to read as follows:]

6.4 Reinstatement

Generally, a customer denied address card or address file sequencing service for a specific ZIP Code may not submit cards for sequencing at the post office or submit address files for sequencing at the National Customer Support Center where that sequencing service was terminated for 1 year after the effective date of termination. After that time, the customer is again authorized to submit the ZIP Code address cards (to the post office) or an address file (to the National Customer Support Center) for sequencing. At any time during the year after termination of service, the customer may renew the submission if the postmaster (for address cards) or the National Customer Support Center (for address files) is convinced that the customer has taken all necessary action to correct the past errors.

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–23658 Filed 9–18–00; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 386

[Docket No. FMCSA–00–7332]

RIN 2126–AA54

Sanctions Against Motor Carriers, Brokers, and Freight Forwarders for Failure to Pay Civil Penalties

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to implement section 206 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) by amending the penalty provisions of the rules of practice of the Federal Motor Carrier Safety Regulations (FMCSRs). This action would prohibit a motor carrier that does not pay civil penalties assessed by the FMCSA, or that does not arrange and abide by its payment agreements, from operating in interstate commerce. Furthermore, the registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty would be suspended. The prohibition would begin on the 91st day after the payment date specified in the final agency order or on the 91st day after the due date of a missed payment arranged in a payment plan. Motor carriers that continue to operate would be subject to additional penalties, including revocation of their registrations. However, the prohibition would not apply to anyone who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of the Bankruptcy Code.

DATES: Comments must be received on or before October 19, 2000.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

All comments will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; or Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Background

Section 206 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Public Law 106–159, 113 Stat.

1748, at 1763) addresses two issues related to delinquent payment of penalties. Section 206(a) amends 49 U.S.C. 13905(c) by authorizing the Secretary of Transportation (Secretary) to suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder if that entity has not paid a civil penalty within 90 days of the time specified by official order for payment, or has not arranged and abided by a payment plan. However, the Secretary may not revoke the registration of a person unable to pay penalties because the person is a debtor in a case under chapter 11 of the Bankruptcy Code (11 U.S.C. 362 *et seq.*)

The term ''registration'' applies to for-hire motor carriers, freight forwarders, and brokers that register with the FMCSA to provide transportation under 49 U.S.C. chapter 139. This includes entities that held operating authority from the Interstate Commerce Commission as of the effective date of the ICC Termination Act of 1995 (ICCTA) (Public Law 104–88, 109 Stat. 803), as well as entities registered by the Federal Highway Administration (FHWA) after January 1, 1996 and by the Federal Motor Carrier Safety Administration on or after January 1, 2000.

Section 206(b) amends 49 U.S.C. 521(b) to prohibit operations in interstate commerce by an owner or operator of a commercial motor vehicle (CMV) who fails to pay a civil penalty, or to arrange and abide by an acceptable payment plan. A CMV owner or operator must cease its interstate operations if it has not paid its fine within 90 days of the time specified by the Secretary's order for payment, or has not arranged and abided by a payment plan. Similar to the exception contained in section 206(a), the Secretary may not apply this prohibition to anyone unable to pay penalties because the person is a debtor in a case under chapter 11 of the Bankruptcy Code.

Sections of U.S. Code and Implementing Regulations Affected

Section 206(a) of the MCSIA authorizes the Secretary to suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder that fails to pay, or fails to abide by a payment plan, for civil penalties imposed under several chapters of title 49 of the United States Code: Chapter 5, Special Authority; Chapter 51, Transportation of Hazardous Materials; Chapter 149, Civil and Criminal Penalties; and Chapter 311, Commercial Motor Vehicle Safety. The subject matter included is quite broad. Chapter 149 encompasses violations of the ICCTA and the commercial regulations. Chapter 311 includes a broad range of safety regulations, most of which are also covered in Chapter 5.

Recommendations of DOT Office of Inspector General

Section 216 of the MCSIA requires the Secretary to implement all of the recommendations contained in the April 26, 1999, report of the Office of the DOT Inspector General (IG) (''Motor Carrier Safety Program,'' Report TR–1999–091, available at *http://www.oig.dot.gov/hywauds.htm)* assessing the effectiveness of the DOT's motor carrier safety programs, ''except to the extent to which such recommendations are specifically addressed in sections 206, 208, 217, and 222 of this Act.'' One of those recommendations was to ''[i]mplement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements completed,'' which is specifically addressed in section 206 of the MCSIA.

The IG report provided the background for its recommendation in the following narrative:

> Standards for administrative collection of penalties, cited in Code of Federal Regulations, Title 4, Volume 1, Section 102.9, allow agencies to suspend or revoke licenses or operating authority for nonpayment of fines. However, OMC [the FHWA's former Office of Motor Carriers, now the FMCSA] has not exercised these sanctions. For example, one motor carrier has had $126,653 in outstanding fines since October 1995 and continues normal operations. Another motor carrier has a penalty in excess of $22,000, which has been outstanding for more than four years. OMC's records indicate a settlement was reached between this motor carrier and the Department of Justice; however, OMC has not received payment. In addition, OMC's records indicate the motor carrier had a more recent penalty assessment in excess of $17,000. The continued practice of permitting motor carriers with outstanding fines or repetitive penalties to continue normal operations limits the effectiveness of OMC's enforcement program.

The subject matter of this NPRM is limited to the sanctions provided in section 206 of the MCSIA for failure to pay civil penalties imposed under the procedures of 49 CFR part 386.

The following table summarizes the recent history of the FHWA and the FMCSA civil fines and forfeitures. The number of new cases has fluctuated considerably from year to year. Following the decision in the *MST Express* v. *Federal Highway Administration*, 108 F. 3d 401 (D.C. Cir. 1997) case, which held that the FHWA's safety fitness rating methodology was invalid because it was not published in accordance with the notice-and-comment requirements of the Administrative Procedure Act (5 U.S.C. 553), the FHWA published an interim final rule reestablishing the rating system for motor carriers of passengers and hazardous materials and later issued a final rule establishing a new safety rating system (62 FR 60035, November 6, 1997). Although the decision in *MST Express* did not prohibit the FHWA from bringing new civil penalty actions, which are independent of the rating process, it had the effect of reducing the number of compliance reviews, which are a primary generator of enforcement actions. In addition, some motor carriers that would have requested compliance reviews to upgrade a conditional or an unsatisfactory safety rating, and some unrated carriers, probably did not request compliance reviews during the time the decision in *MST Express* was in force, because the agency would not have been able to change a rating of record or to issue a new rating during this time.

The following table provides a summary history of civil fines and forfeitures assessed and collected by the FMCSA and its predecessor agencies. The data in this table reflect fiscal records (accounts receivables) that cover enforcement actions that cross fiscal years.

TABLE 1.—FMCSA CIVIL FINES AND FORFEITURES

		FY 1996	FY 1997	FY 1998	FY 1999
New Penalties Assessed	No. of cases	2,339	2032	2445	2987
	Amount	$8,099,961	$5,209,833	$6,835,647	$8,749,408
Collections	No. of cases	2,128	1,101	2,027	3,748
	Amount paid	$8,437,434	$4,438,350	$6,009,032	$7,027,544
Written Off	No. of cases	86	84	112	34

TABLE 1.—FMCSA CIVIL FINES AND FORFEITURES—Continued

		FY 1996	FY 1997	FY 1998	FY 1999
	Amount	$394,015	$387,021	$510,478	$114,579
Delinquent Claims with Agency	No. of cases	1,237	1,080	968	1,436
	Amount due	$3,711,317	$4,002,140	$3,665,392	$5,118,361
Outstanding Claims with DOJ	No. of cases	99	88	50	28
	Amount due	$713,898	$431,940	$406,379	$296,746
Total Outstanding Claims with Agency and DOJ.	No. of cases	1,336	1,168	1,018	1,464
	Amount due	$4,425,215	$4,434,080	$4,071,771	$5,415,107

Cases were written off for the following reasons:

TABLE 2.—REASONS FOR WRITING-OFF CASES

Reason	FY 1996	FY 1997	FY 1998	FY 1999
Carrier out of business	$201,773	$228,258	$74,475	$8,785
Bankruptcy	100,178	58,028	369,172	75,382
Closed by Regional Counsel	43,554	30,848	10,373	2,400
Closed by U.S. Attorney	0	25,450	0	0
Statute of limitations expired	10,901	7,876	0	0
Principal incarcerated	11,260	0	1,555	0
Principal deceased	2,665	8,548	20,286	0
Not cost effective to pursue	23,684	21,035	856	0
Foreign debtor (no collection means)	0	4,678	33,761	36,797
Files destroyed in OK City bombing	0	2,300	0	0
Total	$394,015	$387,021	$510,478	$114,579

The amounts written off varied considerably from year to year. The largest reductions in write-offs are due to a motor carrier's bankruptcy and motor carriers that had gone out of business.

Penalty Procedure

The rules of practice for motor carrier proceedings are contained in 49 CFR part 386. They were recently amended (65 FR 7753, February 16, 2000) to include proceedings concerning violations of the commercial regulations that were formerly implemented and administered by the Interstate Commerce Commission. The purpose of the amendment was to ensure that all civil forfeiture and investigation proceedings instituted by the FMCSA are governed by uniform and consistent procedures.

A Notice of Claim (NOC) is the official charging document used by the agency to initiate an enforcement action for violations of applicable provisions of the FMCSRs (49 CFR parts 350–399, including the commercial regulations (49 CFR parts 360–379)) and the Hazardous Materials Regulations (HMRs, 49 CFR parts 171–180). The NOC lays the foundation for the claim. Among other things, it lists the violations discovered during the compliance review conducted at a specified location on certain date(s), that the agency intends to prosecute; provides a statement of the provisions of the regulations or law alleged to have been violated; and a brief statement of facts regarding the violations. The NOC also specifies the amount being claimed for each violation and the maximum amount authorized to be claimed under the statute. The rules for commencement of proceedings and for pleadings are described at 49 CFR part 386, subpart B.

An NOC is issued by the appropriate FMCSA State Director within 20 business days of the completion of the compliance review or investigation. To establish a record of delivery, it is mailed certified/return receipt requested to U.S. respondents and sent registered/return receipt requested by commercial express courier service to foreign respondents.

The NOC provides specific instructions to motor carriers on their response options. A motor carrier may pay its penalty in full—the agency advises the motor carrier to do so within 25 business days. The motor carrier may also request a monthly payment schedule to settle the claim. This request must be made within 25 days of service of the NOC. Finally, the motor carrier may contest the NOC and request a hearing on the record on any material issues of fact in dispute—the motor carrier must file a written request for a hearing within 15 days of service of the NOC. If the motor carrier does not file such a request, it waives its right to a hearing.

If the motor carrier does not respond to the FMCSA, the NOC becomes the Final Agency Order (FAO) by default 25 days after the NOC was served and the carrier is so notified.

The FAO is a notice of the outstanding debt the motor carrier owes the Federal government. It may be issued following a proceeding before the Chief Safety Officer [1] or an Administrative Law Judge, or it may follow a carrier's default as discussed above. An order issued by the Chief Safety Officer is final on the day it is served and specifies a payment due date. An order issued by an Administrative Law Judge is final 45 days after it is served (unless it is modified by the Chief Safety Officer); it will also specify a payment due date.

If the motor carrier appeals the FAO to a Federal Circuit Court of Appeals, the terms and payment due date of the FAO are not stayed unless the Court so specifies.

The FAO advises the motor carrier that, in addition to the amount of the penalty assessed, the motor carrier may be liable for interest and administrative penalties based upon the outstanding balance. The respondent must pay the fine within 30 days of receipt of the FAO. The respondent may petition the

[1] The Chief Safety Officer is also the Assistant Administrator of the FMCSA (Title 1, Sec. 101 of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1750, December 9, 1999).

FMCSA for reconsideration of the FAO within 20 days after it is served.

If the motor carrier has not paid its fine in full, or if it has not executed an agreement with the appropriate FMCSA Service Center for a payment schedule for its fine, an accounts receivable memorandum is issued by the FMCSA to the FHWA Finance Division which will pursue collection through administrative channels. (The FHWA is providing certain administrative support for the FMCSA under an interagency agreement until the FMCSA is authorized to fully staff its administrative offices.) If the agency has not received payment 30 days after the FAO is served on a motor carrier, the FHWA will send a letter to the motor carrier by certified mail, return receipt requested. The agency sends additional letters if it has still not received payment by 60 days and 90 days after service of the order. After 180 days, the FHWA refers the case to the Department of Treasury for collection of the fine in accordance with the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321–358.

This NPRM would add one additional step to the penalty procedure. If the FMCSA has not received payment 45 days after service of the FAO, the agency will send the motor carrier a letter by certified mail, return receipt requested. This 45-day letter would provide the motor carrier one additional notice that its operations in interstate commerce (in the case of private and for-hire motor carriers) and its operating authority (in the case of authorized for-hire motor carriers, brokers, and freight forwarders) may be suspended on the 91st day after service of the FAO. Section 206 of the MCSIA specifically states that the cessation of operations and suspension of operating authority provisions do not apply to motor carriers unable to pay civil penalties because they are debtors in bankruptcy proceedings under chapter 11 of the Bankruptcy Code. Therefore, those carriers must provide the following information: (1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.,* Chapter 7 or 11); (2) the bankruptcy case number; (3) the court in which the bankruptcy proceeding was filed; and (4) any other information requested by the agency to determine a debtor's bankruptcy status. This written response by the debtor will enable the FMCSA to verify debtor status and to assess the debtor's ability to pay penalties.

Motor carriers, freight forwarders, and brokers are cautioned, however, not to construe the 45-day letter as an opportunity to reargue the merits of the penalty assessment, or put into issue their ability to pay. They will have had several opportunities to address these concerns with the FMCSA at earlier stages in the penalty procedure. The only written response from a carrier, broker, or freight forwarder sufficient to prevent suspension of operations and operating authority, would be proof of payment, or proof of bankruptcy debtor status.

Brokers, freight forwarders, and for-hire motor carriers that continue to operate in interstate commerce in violation of the suspension of their operating authority may have that authority revoked after notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV (h) of Appendix A to part 386 on all carriers, freight forwarders, and brokers that operate during a period of suspension.

Motor Carriers Subject to Penalties

Part 386 defines a motor carrier as a [for-hire] motor carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 13102 and 31501 (65 FR 7753 at 7756, February 16, 2000). There are currently two categories of motor carriers of passengers warranting special mention: (1) Non-business private motor carriers of passengers, such as, churches or social groups, and (2) owners and operators of vehicles designed to transport fewer than 16 passengers, including the driver, for compensation.

Non-business private motor carriers of passengers are not required to maintain most of the records otherwise mandated by the FMCSRs and do not receive safety ratings from the FMCSA. However, they are still subject to many of the substantive regulations and to safety enforcement at roadside. Violations of the FMCSRs, HMRs, or the commercial regulations discovered during the course of a compliance review or at roadside could subject these motor carriers to enforcement action and other sanctions. In addition, if a motor carrier in this category were found to have such unsafe operational practices and/or to have committed such severe safety violations as to make it an imminent hazard to public health, the FMCSA may issue an imminent hazard out-of-service order under 49 CFR 386.72.

The second category of passenger motor carrier of interest is comprised of for-hire operators of limousines and vans that are designed to transport between 9 and 15 passengers, including the driver. These for-hire motor carriers were required to register and obtain operating authority from the former Interstate Commerce Commission. Since 1996, they have been required to register with the FHWA's former Office of Motor Carriers, now the FMCSA. They were not subject to most provisions of the FMCSRs because their vehicles were not considered ''commercial motor vehicles'' under 49 CFR 390.5—the definition covered only passenger vehicles designed to transport 16 or more passengers, including the driver.

In 1998, section 4008 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, at 405, June 9, 1998) changed the statutory definition of ''commercial motor vehicle'' to include those designed or used to transport ''more than 8 passengers (including the driver) for compensation'' (49 U.S.C. 31132(1)(B)). Most of the FMCSRs (except parts 382, 383, and a few other requirements) became applicable to these smaller passenger vehicles on June 9, 1999; subpart B of part 387, minimum levels of financial responsibility for for-hire motor carriers of passengers, already was applicable to those carriers subject to the registration requirements.

Section 212 of the MCSIA subsequently required the FMCSA to amend the FMCSRs to cover certain commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation. At a minimum, the Congress indicated that the rulemaking shall apply the FMCSRs to ''camionetas,'' commercial vans operating in the area of the U.S.-Mexico border, as well as those commercial vans operating in interstate commerce that have been determined to pose serious safety risks. A rulemaking on this topic is under development. As this class of carriers becomes subject to the FMCSRs, they will also be subject to the consequences proposed in today's NPRM—namely, revocation of operating authority and prohibition against operating in interstate commerce, if they fail to pay civil penalties assessed by the FMCSA.

Motor Carriers With Penalties Outstanding

This rulemaking will not be retroactive. The provisions of this proposed action would apply only to penalties included in FAOs issued on or after the effective date of a final rule issued in this matter. There is nothing in the language of section 206 of the MCSIA that suggests that the Congress intended it to apply retroactively. As the FMCSA noted in the preamble to the final rule concerning the application of

the provisions of section 4009 of the TEA–21 (Safety Fitness), the Supreme Court's discussion of retroactive and prospective application of laws in *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994), was carefully nuanced. It said, among other things:

> When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, i.e., whether it would * * * increase a party's liability for past conduct * * * If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Id., at 280.

We find that section 206 of the MCSIA includes no ''express command'' to shut down motor carriers based on non-payment of penalties assessed before the provision was enacted. Therefore, the presumption against retroactive application of laws applies.

Exclusion of Chapter 11 Debtors

The final paragraphs of MCSIA sections 206(a) and (b) note that the suspension or revocation of registration and the prohibition on operation in interstate commerce after nonpayment of penalties ''shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under Chapter 11 of title 11, United States Code.''

The FMCSA believes that the Congress, in creating the bankruptcy exemption, did not intend to exempt all Chapter 11 debtors from the license suspension/revocation provision and the requirement to cease operations in interstate commerce. The express language of the statutory exemption applies not to all Chapter 11 debtors, but to any person *who is unable to pay a civil* penalty by reason of being in Chapter 11. Congress recognized that the determination of whether a Chapter 11 debtor is able to pay certain debts is within the jurisdiction of the bankruptcy court. The FMCSA interprets the statutory language as requiring the agency to seek a determination from the bankruptcy court that a motor carrier is able to pay a civil penalty claim prior to imposing a suspension of its operating authority or ordering it to cease its interstate operations.

Under the automatic stay provisions of the Bankruptcy Code, a petition filed in bankruptcy ''operates as a stay, applicable to all entities of—(1) the commencement or continuation * * * of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case. * * *'' 11 U.S.C. 362(a). However, ''the filing of a petition * * * does not operate as a stay—(4) * * * of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power * * * and (5) * * * Of the enforcement of a judgment, other than a monetary judgment, obtained in an action or proceeding by a governmental unit to enforce such unit's police or regulatory power.'' 11 U.S.C 362(b).

In determining whether an agency action fits within the exemption of section 362(b)(4), the courts have developed the ''public policy'' test which distinguishes between governmental proceedings aimed at effectuating public policy and those aimed at protecting the government's pecuniary interest in the debtor's property. See *Eddleman* v. *U.S. Department of Labor,* 923 F. 2d 782 (10th Cir. 1991); and *NLRB* v. *Edward Cooper Painting, Inc.,* 804 F. 2d 934 (6th Cir. 1986). Agency proceedings under section 206 of the MCSIA are clearly designed to bring about the public policy of encouraging compliance with the FMCSRs, HMRs, and commercial regulations. As a result, filing for bankruptcy protection under Chapter 11 or any other chapter does not automatically relieve a motor carrier, broker, or freight forwarder from its regulatory obligations.

Relationship of Penalty Provision to Safety Rating

As a result of section 15(b) of the Motor Carrier Safety Act of 1990 (Public Law 101–500, 104 Stat. 1218), motor carriers receiving an *unsatisfactory* safety rating from the FHWA/FMCSA have been prohibited from using CMVs to transport more than 15 passengers, including the driver, or placardable quantities of hazardous materials, in interstate commerce. Furthermore, those motor carriers could not be used by Federal agencies. These prohibitions and the procedures for applying them are contained in 49 CFR 385.13. Section 4009 of the TEA–21 extended a similar prohibition to all other motor carriers, irrespective of their cargo, which are found by the FMCSA to be unfit. These owners and operators may not operate CMVs in interstate commerce beginning on the 61st day after such fitness determination. Regulations have been issued to implement this provision (65 FR 50919, August 22, 2000).

There are circumstances when the FMCSA assesses penalties against a motor carrier but does not assign that motor carrier an unsatisfactory safety rating. However, under the rules proposed today, the impact of an unpaid fine on a motor carrier's operations would be the same—the motor carrier would be prohibited from operating CMVs in interstate commerce. Those motor carriers that do not pay civil penalties or abide by payment plans as required will be in violation of the law.

Discussion of Proposal

The proposed changes to 49 CFR part 386 are a straightforward implementation of the amendments to 49 U.S.C. 521(b) and 13905(c) made by section 206 of the MCSIA. The regulatory changes prohibit interstate operations by motor carriers delinquent in payment of penalties assessed by the FMCSA, unless the motor carrier is unable to pay because it is a debtor in a case under Chapter 11, title 11, United States Code. Brokers, freight forwarders, and for-hire motor carriers may also have their registrations suspended, amended, or revoked for failure to pay civil penalties in a timely manner.

The proposed rule would apply prospectively. It would only apply to FAOs issued on or after the effective date of the final rule. FAOs issued before that date would not be subject to the provisions of the rule.

The FMCSA is providing a comment period of 30 days on this proposed rule. While E.O. 12866 and DOT policy generally favor at least a 60-day period, FMCSA is setting an earlier deadline in order to meet the statutory deadline for issuing the final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this proposed regulatory action is not significant within the meaning of Executive Order 12866 nor under the regulatory policies and procedures of the DOT. This proposed rule would require any motor carrier in interstate commerce that had not paid a penalty assessed by the FMCSA within 90 days of the final agency order, or had not abided by a payment plan that it had arranged with the FMCSA, from providing interstate transportation.

As of May 25, 2000, the FMCSA's MCMIS and Enforcement Tracking Systems and the FHWA's DAFIS fiscal accounting system contained the

following information concerning motor carrier enforcement cases that resulted in fines being assessed:

TABLE 3.—ENFORCEMENT CASES INVOLVING FINES, U.S. MOTOR CARRIERS

	1–6	7–20	21–100	101–400	401–1000	1001+	Total	Percent
FY 1998 Total cases	255	269	167	36	6	3	736	100.0
Paid immediately	154	177	128	31	6	3	499	67.8
Billings current	21	17	9	2	0	0	49	6.7
Billings outstanding [1]	80	75	30	3	0	0	188	25.5
FY 1999 Total cases	799	760	419	66	11	7	2062	100.0
Paid immediately	487	538	336	54	11	7	1433	69.5
Billings current	106	82	52	9	0	0	249	12.1
Billings outstanding [1]	206	140	31	3	0	0	380	18.4
FY 2000 [1] Total cases	295	300	160	18	2	1	776	100.0
Paid immediately [1]	112	153	85	12	1	1	364	46.9
Billings current [1]	66	69	38	1	0	0	174	22.4
Billings outstanding [1]	117	78	37	5	1	0	238	30.7

[1] Year-to-date.

Note: ''Billings Outstanding'' in this and the following two tables (tables No. 4 and 5) refers to motor carriers that are more than 30 days delinquent in their payments.

TABLE 4.—FINES AGAINST U.S. MOTOR CARRIERS, DOLLARS

Fines	1–6	7–20	21–100	101–400	401–1000	1001+	Total
FY 1998 Total fine	$637,446	$1,071,130	$1,220,525	$425,220	$52,030	$72,500	$3,478,851
Paid immediately	307,464	646,025	882,435	348,460	51,670	72,500	2,308,554
Billings current	13,076	56,814	65,246	16,296	0	0	151,432
Billings outstanding	235,955	338,937	201,035	49,310	0	0	825,237
FY 1999 Total fine	1,934,845	3,241,918	3,257,668	768,359	70,290	88,000	9,361,080
Paid immediately	1,078,740	1,939,570	2,271,852	561,684	64,790	88,000	6,004,636
Billings current	201,975	235,982	342,877	90,372	0	0	871,206
Billings outstanding	614,914	939,860	405,880	126,630	0	0	2,087,284
FY 2000 [1] Total fine	587,477	1,197,055	1,260,461	144,340	18,670	43,510	3,251,513
Paid immediately	270,204	613,232	526,369	141,040	4,800	43,510	1,599,155
Billings current	68,813	156,473	68,813	156,473	187,424	13,800	651,796
Billings outstanding	302,946	429,825	455,043	74,550	13,870	0	1,276,234

[1] Year-to-date.

TABLE 5.—AVERAGE FINES PER CASE AGAINST U.S. MOTOR CARRIERS, DOLLARS

	1–6	7–20	21–100	101–400	401–1000	1001+	Total
FY 1998 Total fine	$2,500	$3,982	$7,309	$11,812	$8,672	$24,167	$4,727
Paid immediately	1,997	3,650	6,894	11,241	8,612	24,167	4,626
Billings current	623	3,342	7,250	8,148	n/a	n/a	3,090
Billings outstanding	2,949	4,519	6,701	16,437	0	0	4,390
FY 1999 Total fine	2,422	4,266	7,775	11,642	6,390	12,571	4,540
Paid immediately	2,215	3,605	6,761	10,402	5,890	12,571	4,190
Billings current	1,905	2,878	6,594	10,041	n/a	n/a	3,499
Billings outstanding	2,985	6,713	13,093	42,210	0	0	5,493
FY 2000 [1] Total fine	1,991	3,990	7,878	8,019	9,335	43,510	4,190
Paid immediately	2,413	4,008	6,193	11,753	4,800	43,510	4,393
Billings current	1,043	2,268	1,811	156,473	0	0	3,746
Billings outstanding	2,589	5,511	12,298	14,910	13,870	0	5,362

[1] Year-to-date.

The number of motor carriers with fines outstanding is a minute fraction of the motor carriers in the FMCSA's MCMIS. For example, in fiscal year 1999, 380 motor carriers had not paid their fines, or were more than 30 days overdue in their payment plans. In that year, there were approximately 500,000 motor carriers listed as active. However, the dollar value of the outstanding claims is substantial (see Tables 1 and 4), and has remained relatively constant over time.

Table 6 expands upon the information contained in Table 2 and illustrates the payment records from motor carriers of different size categories for Federal fiscal year 1999, the most recent year for which a full year's worth of data is available.

TABLE 6.—FISCAL YEAR 1999 PAYMENT PATTERNS OF U.S. MOTOR CARRIERS, BY POWER UNITS OPERATED

	1–6	7–20	21–100	101–400	401–1000	1001+	Total
Rated carriers	88,825	25,617	11,824	2,135	360	178	128,939
Unrated carriers	298,350	17,381	4,149	490	80	37	320,487
Total carriers	387,175	42,998	15,973	2,625	440	215	449,426
Total cases	799	760	419	66	11	7	2,062
Paid immediately	487	538	336	54	11	7	1433
(Percent cases)	61.0%	70.8%	80.2%	81.8%	100.0%	100.0%	69.5%
Billings current	106	82	52	9	0	0	249
(Percent cases)	13.3%	10.8%	12.4%	13.6%	0.0%	0.0%	12.1%
Billings outstanding	206	140	31	3	0	0	380
(Percent cases)	25.8%	18.4%	7.4%	4.5%	0.0%	0.0%	18.4%

Finally, the data from a recent FHWA report of accounts receivable (as of April 30, 2000, and covering accounts for the prior 12 month period) provides a snapshot of motor carriers' progress in adhering to their payment plans. Because of the particular reporting period, the data in Table 7 is not directly comparable to the other tables. However, the average principal per account is comparable to the ''Billings outstanding'' figures in Table 5.

TABLE 7.—PAYMENT PLANS ACCOUNTS, MAY 1999–APRIL 2000

Status	Number	Principal	Avg/acct
Current	177	$947,313	$5,352
1–30 days	155	887,981	5,729
31–60 days	196	795,232	4,057
61–90 days	142	507,839	3,576
91–180 days	226	998,224	4,417
	896	4,136,589	4,617

Out of the 896 cases, 670 (75 percent) of the motor carriers would be able to continue operating in interstate commerce under the provisions of the NPRM, provided that no other sanctions (such as a determination of unfitness) had been issued. (Because of the accounting case coding method used, there is no readily available breakdown by the size categories of motor carriers, nor could we determine readily how these cases were divided among U.S., Canadian, or Mexican motor carriers.) Not shown in the table are an additional 1,539 cases that were delinquent over 181 days—these had been referred to the Department of Treasury for collection, and include cases referred prior to May 1999.

Based upon the data presented here, the FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Statistics on enforcement actions taken during each of Federal fiscal years 1996 through 1999 indicate that approximately 300 to 500 motor carriers per year did not pay their assessed penalties within 90 days after receiving a final agency order. Under the proposed regulations, these motor carriers would be required to cease their operations in interstate commerce until they paid their penalties. That sanction may induce most such motor carriers to pay the civil penalty within 90 days or to abide by their agreed-upon payment plans. It is assumed that the costs of paying the fines, which have historically averaged between 3,500 and 5,500, would be less than the potential significantly higher cost of not paying, and facing the shutdown of interstate operations. Thus, the entities involved would take steps to achieve compliance with the lower cost alternative. For the purpose of this analysis, the FMCSA estimates that between 50 and 75 percent of these motor carriers would pay their fines within 90 days rather than face additional sanctions. Therefore, approximately 75 to 250 motor carriers annually might not pay their assessed fines and would face the penalties attached to this proposed rule. This estimate is conservative because it does not account for those motor carriers in Chapter 11 bankruptcy proceedings that would not be subject to this proposed rule.

As noted above, the data presented also show that the average fines assessed on the motor carriers range between 3,500 and 5,500. The majority of fines that are paid under payment plans arranged with the FMCSA —75 percent—are not more than 90 days in arrears. However, this analysis is limited to the subject of this NPRM, namely, timely payment of fines. It does not take into consideration the final rule concerning ''unfit'' motor carriers that the agency published in the **Federal Register** on August 22, 2000 (65 FR 50919). That rulemaking implements the provisions of section 4009 of TEA–21 (Pub. L. 105–178, Title, IV, section 4009(a), 112 Stat. 405, (June 9, 1998)). Some carriers may be forced to halt operations both because they have an unsatisfactory safety rating and because they have not paid outstanding penalties. Although this number may be small, it complicates the task of separately determining the impact of this rule. The agency is interested in any information that will help to determine the economic impact of this proposed rule on motor carrier transportation and any additional impacts on industry customers.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FMCSA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. The adverse impact that this rule would have on those few motor carriers not involved in bankruptcy proceedings which fail to pay their penalties in a timely manner, is exactly the effect intended by Congress.

This proposed rule would only affect the operations of the small number of motor carriers that do not pay civil penalties assessed as part of enforcement actions. The number of motor carriers involved is expected to continue to be extremely small—fewer than one-tenth of one percent of motor

carriers per year listed as active in the MCMIS. The FMCSA believes the number of motor carriers potentially subject to this level of impact is much smaller than the number of motor carriers that cease operations as a result of normal economic fluctuations. This rulemaking reinforces the importance of complying with the safety regulations by putting into place a mechanism to require motor carriers to pay penalties assessed, unless they are unable to pay because they are debtors in Chapter 11 bankruptcy proceedings.

This rulemaking imposes no requirements that would generate new costs for motor carriers, brokers, and freight forwarders. Those entities would see no change to their operations, provided they pay assessed monetary penalties within the time frames that they arrange with the FMCSA. Based upon the extremely small number of motor carriers projected to be affected, the agency believes that the overall adverse economic effects of this rulemaking would be minimal. This rulemaking, if adopted, would allow the FMCSA to require those very few motor carriers that do not pay civil penalties, or abide by payment agreements, to cease their operations in interstate commerce. Brokers, freight forwarders, and for-hire motor carriers operating in interstate commerce would also lose their operating authority until they paid their overdue civil penalties. This proposed rule would provide the FMCSA with an essential tool to take prompt and effective action against these motor carriers.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. The FMCSA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this proposed rulemaking on small entities. The motor carriers that would be economically impacted by this rulemaking would be those who do not pay their civil penalties by the 90th day after the FMCSA's final agency order or that have failed to arrange and abide by a payment plan.

Motor carriers can avoid the consequences of this proposed rule simply by paying their civil penalties. The FMCSA does not assess fines at a level that would cause a motor carrier to shortchange its safety and soundness of operations in order to pay its fine. In determining the level of penalties, the FMCSA takes into account, among other things, a motor carrier's ability to pay. The FMCSA also allows motor carriers to arrange a payment plan with the agency. Both of these considerations are tailored to the financial needs of small motor carriers and are part of the agency's current procedures. Therefore, the FMCSA hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities. The FMCSA invites public comment on this determination.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks.'' This proposed rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would implement a statutory mandate to prohibit motor carriers that do not pay assessed penalties from operating in interstate commerce. Motor carriers can avoid all of the implications of this mandate by complying with the FMCSRs, thereby avoiding adverse enforcement actions. Failing that, the motor carrier can avoid the new sanctions this NPRM would attach by paying penalties assessed within 90 days of the final agency order. If the motor carrier arranges a payment plan with the FMCSA, it can avoid the new sanctions by abiding by its payment plans. The FMCSA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although the FMCSA is revising part 386 of the FMCSRs, States are not required to adopt part 386 as a condition for receiving Motor Carrier Safety Assistance Program grants. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 385

Highway safety, Motor carriers.

49 CFR Part 386

Highway safety, Motor carriers, Rules of practice.

Issued on: September 14, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, Chapter III, parts 385 and 386 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b)(5)(A) and (b)(8), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

2. Add § 385.14 to read as follows:

§ 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.

(a) A motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER PROCEEDINGS

3. Revise the authority citation for part 386 to read as follows:

Authority: 49 U.S.C. 113, Chapters 5, 51, 59, 131-141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106-159; and 49 CFR 1.45 and 1.73.

4. Revise § 386.1 to read as follows:

§ 386.1 Scope of rules in this part.

The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379)) and the Hazardous Materials Regulations (49 CFR parts 171–180). The purpose of the proceedings is to enable the Assistant Administrator to determine whether motor carriers, property brokers, freight forwarders, or their agents, employees, or any other person subject to the jurisdiction of the FMCSA, have failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations and, if such violations are found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

5. In § 386.2, remove ''Federal Highway Administration'' and add ''Federal Motor Carrier Safety Administration'' each place it appears; and add the new definitions of *Assistant Administrator, Broker, Final agency order*, and *Freight forwarder*, in alphabetical order, to read as follows:

§ 386.2 Definitions.

* * * * *

Assistant Administrator means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C.113(d), and the final agency decisionmaker in motor carrier safety and hazardous materials proceedings under this part.

* * * * *

Broker means a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they themselves have accepted and legally bound themselves to transport.

* * * * *

Final agency order means a notice of final agency action issued pursuant to this part by either the appropriate FMCSA Field Administrator (for default judgements under § 386.14(e)), the FMCSA Chief Safety Officer, or an Administrative Law Judge (ALJ), typically requiring payment of a civil penalty by a broker, freight forwarder, or motor carrier.

Freight forwarder means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments;

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

* * * * *

6. Add §§ 386.83 and 386.84 to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) *General rule.* A motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's Final Agency Order is prohibited from operating in interstate commerce starting on the next (*i.e.,* the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a motor carrier to pay a civil penalty in installments. If the motor carrier fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A motor carrier that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (*i.e.,* the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the motor carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so specifies.

(b)(1) *Notification of delinquent payment.* The FMCSA will notify the motor carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the motor carrier being prohibited from operating in interstate commerce.

(2) The notice will be delivered by certified mail or commercial express service. If a motor carrier's principal place of business is in a foreign country, it will be delivered to the motor carrier's designated agent.

(c) Motor carriers that continue to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV (h) of Appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor

in a case under chapter 11, title 11, United States Code. Motor carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.,* Chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

§ 386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

(a)(1) *General rule.* The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (*i.e.,* the 91st) day. The suspension continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* TheFMCSA Service Center may allow a respondent broker, freight forwarder, or for-hire motor carrier to pay a civil penalty in installments. If the respondent fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. The registration of a respondent that fails to pay the remainder of its civil penalty in full within 90 days after the date of the missed installment payment, is suspended on the next (*i.e.,* the 91st) day. The suspension continues until the FMCSA has received full payment of entire penalty.

(3) *Appeals to Federal Court.* If the motor carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so specifies.

(b)(1) *Notification of delinquent payment.* The FMCSA will notify a respondent broker, freight forwarder, or for-hire motor carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the suspension of the respondent's registration.

(2) The notice will be delivered by certified mail or commercial express service. If a respondent's principal place of business is in a foreign country, it will be delivered to the respondent's designated agent.

(c) The registration of a broker, freight forwarder or for-hire motor carrier that continues to operate in interstate commerce in violation of this section may be revoked after notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV (h) of Appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11, title 11, United States Code. Brokers, freight forwarders, or for-hire motor carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.,* Chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

* * * * *

Appendix A to Part 386 [Amended]

7. Add paragraph h to part IV of Appendix A to part 386 to read as follows:

* * * * *

h. *Violation*—conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to $10,000 for each day that operations are conducted during the suspension period.

[FR Doc. 00–24105 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis on Proposed Critical Habitat Designation for the Great Lakes Breeding Population of the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the draft economic analysis of the proposed designation of critical habitat for the Great Lakes breeding population of the piping plover. We also provide notice of the reopening of the comment period for the proposal to allow all interested parties to submit written comments on the proposal and on the draft economic analysis. The new comment period will allow all interested parties to submit comments on the draft Economic Analysis and proposed designation. Comments received on the proposal after the close of the original comment period but before this reopening will be incorporated into the public record as a part of this reopening and do not need to be resubmitted.

DATES: The original comment period for the critical habitat proposal closed on September 5, 2000. The comment period is reopened and we will accept comments received on or before October 19, 2000. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis for the Great Lakes breeding population of piping plovers are available by writing to Piping Plover Information, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111, on the Internet at *http://www.fws.gov/pipingplover,* or by calling (612) 713–5350. Written comments on the proposal for the Great Lakes breeding population should be sent to ''Piping Plover Comments'' at the above address, by e-mail to *pipingplovercomments@fws.gov,* or by facsimile to (612) 713–5292. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Laura Ragan at the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5157); Fax: (612/713–5292)

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2000, the Service published a proposed rule to designate critical habitat for the Great Lakes breeding population of the piping plover in the

Federal Register (65 FR 41812). The piping plover is a small, pale-colored North American shorebird. Its breeding range extends throughout the northern Great Plains, the Great Lakes, and the north Atlantic coast in the United States and Canada. Based on its distribution, three breeding populations of piping plover have been described: the Northern Great Plains population, the Great Lakes population, and the Atlantic Coast population. Although their breeding ranges are separate, their wintering ranges overlap and extend along the Atlantic and Gulf Coasts from southern North Carolina to Mexico and into the West Indies and the Bahamas. The Great Lakes breeding population is listed as endangered under the Endangered Species Act (Act) of 1973, as amended. We proposed a total of approximately 305 kilometers (km) (189 miles (m)) of Great Lakes mainland and island shoreline as critical habitat for this population of the piping plover. The proposed critical habitat is located in 27 counties in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Great Lakes breeding population of piping plovers, we have conducted a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. In order to accept the best and most current scientific data regarding the critical habitat proposal and the draft economic analysis of the proposal, we reopen the comment period at this time.

The Fish and Wildlife Service has previously conducted and recorded seven public hearings on this critical habitat proposal as required under Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*). Due to the expeditious treatment of this proposed critical habitat determination under Federal District Court order as described in the proposed rule, we will not conduct additional hearings and will accept only written comments during the reopened comment period. Previously submitted oral or written comments on this critical habitat proposal need not be resubmitted.

The current comment period on this proposal closes on October 19, 2000. Written comments may be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Laura Ragan (see **ADDRESSES**.)

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Dated: September 11, 2000.

T.J. Miller,

Chief of Ecological Services, Region 3.

[FR Doc. 00–23995 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 182
Tuesday, September 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Summit United Industries, Inc.; Order Denying Export Privileges

On August 18, 1999, Summit United Industries, Inc. (Summit) was convicted in the United States District Court for the Southern District of Texas, Houston Division, of violating the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)) (IEEPA). Specifically, Summit was convicted of aiding and abetting United States persons and others known and unknown to the United States Attorney of knowingly and willfully exporting, and causing to be exported, two sets of gear and shaft assemblies intended for use in a gear box used in an industrial turbine from the United States to Italy for ultimate delivery to WAHA, located in Tripoli, Libya, without the written authorization of the United States Government.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991 & Supp. 2000)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2000), as amended (65 *Fed. Reg.* 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Summit's conviction for violating the IEEPA, and after providing notice and an opportunity for Summit to make a written submission to the Bureau of Export Administration before issuing an Order denying its export privileges, as provided in section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Summit's export privileges for a period of five years from the date of its conviction. The five-year period ends on August 18, 2004. I have also decided to revoke all licenses issued pursuant to the Act in which Summit had an interest at the time of its conviction.

Accordingly, *it is hereby Ordered*

I. Until August 18, 2004, Summit United Industries, Inc., 6707 Sutter Park Lane, Houston, Texas 77066, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Summit by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 18, 2004.

VI. In accordance with Part 756 of the Regulation, Summit may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Summit. This Order shall be published in the **Federal Register**.

Dated: August 29, 2000.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 00–23964 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors (''DRAMs''): Rescission of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 13, 1999, the Department of Commerce (''the Department'') initiated a changed circumstances review, in response to a request from Micron Technology Inc. (''the petitioner''), to determine whether Hyundai MicroElectronics Co., Ltd. (''Hyundai MicroElectronics''), is the successor-in-interest to LG Semicon Co., Ltd., (''LG Semicon'') and Hyundai Electronics Industries Co., Ltd., (''Hyundai''). The Department is rescinding this review after receiving a withdrawal from the petitioner of its request for review.

EFFECTIVE DATE: September 19, 2000.

FOR FURTHER INFORMATION CONTACT: Ronald Trentham or Maisha Cryor, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–6320 and (202) 482–5831, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Background

On November 12, 1999, the petitioner requested that the Department conduct a changed circumstances review to determine the cash deposit rate to be applied to Hyundai MicroElectronics in light of the acquisition of LG Semicon by Hyundai, two companies subject to the antidumping duty order.

On December 13, 1999, the Department published in the **Federal Register** (64 FR 69492) a notice of initiation of a changed circumstances review. On August 14, 2000, the petitioner requested that it be allowed to withdraw its request for review.

Rescission of Review

The Department is rescinding this review because the requesting party withdrew its request and there are no compelling reasons to continue the review. *See Brass Sheet and Strip From Canada; Termination of Antidumping Duty Administrative Review,* 63 FR 23269 (April 28, 1998). We note that LG Semicon and Hyundai currently have the same cash deposit rate and that the acquisition of LG Semicon by Hyundai took place in October 1999. Therefore, we will address the acquisition in the context of the May 1, 1999 through April 30, 2000 administrative review of DRAMs from Korea.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.105(a). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 771(i) of the Act and of 19 CFR 351.216.

Dated: September 8, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–24036 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Yeshiva University, 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 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–023. *Applicant:* Yeshiva University, Bronx, NY 10461. *Instrument:* Q Pix Colony Picker. *Manufacturer:* Genetix Ltd., United Kingdom. *Intended Use:* See notice at 65 FR 49966, August 16, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides picking of clones containing DNA of interest from subclone libraries of bacterial artificial chromosomes with a picking rate of 3500 clones per hour and gridding of 100,000 samples per hour. The National Institutes of Health advises in its memorandum of August 10, 2000 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–24037 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export

Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 87–15A04.''

The Association for Manufacturing Technology's (''AMT'') original Certificate was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987); January 3, 1989 (54 FR 837, January 10, 1989); April 20, 1989 (54 FR 19427, May 5, 1989); May 31, 1989 (54 FR 24931, June 12, 1989); May 29, 1990 (55 FR 23576, June 11, 1990); June 7, 1991 (56 FR 28140, June 19, 1991); November 27, 1991 (56 FR 63932, December 6, 1991); July 20, 1992 (57 FR 33319, July 28, 1992); May 10, 1994 (59 FR 25614, May 17, 1994); December 1, 1995 (61 FR 13152, March 26, 1996); October 11, 1996 (61 FR 55616, October 28, 1996); May 6, 1998 (63 FR 31738, June 10, 1998); November 10, 1998 (63 FR 63909, November 17, 1998); and October 29, 1999 (64 FR 61276, November 10, 1999). A summary of the application for an amendment follows.

Summary of the Application

Applicant: AMT—The Association For Manufacturing Technology 7901 Westpark Drive, McLean, Virginia, 22102–4269.

Contact: Cara E. Maggioni, Attorney, Telephone: (202) 662–5162.

Application No.: 87–15A04.

Date Deemed Submitted: September 7, 2000.

Proposed Amendment: AMT seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Merritech, Inc., Saginaw, Michigan; Mega Manufacturing, Inc., for the activities of its Piranha Division, Hutchinson, Kansas; New Nine, Inc., d/b/a GWI Engineering, Grand Rapids, Michigan; New Monarch Machine Tool Company, Cortland, New York; W.A. Whitney Co., Rockford, Illinois (controlling entity: Esterline Technologies, Bellevue, Washington); Evana Automation, Inc., Evansville, Indiana (controlling entity: Phillips Service Industries, Inc., Livonia, Michigan); Compact Manufacturing Systems, Santa Ana, California; ABB Flexible Automation, Inc., New Berlin, Wisconsin (controlling entity: Asea Brown Boveri Inc., Norwalk, Connecticut); and Welduction Corporation, Novi, Michigan (controlling entity: INDUCTOHEAT, Inc., Madison Heights, Michigan);

2. Delete the following companies as ''Members'' of the Certificate: Bramac Machine Tool Co.; Wysong & Miles Company; DeVlieg-Bullard Services Group, Inc.; Defiance Machine & Tool Co.; Dyna Mechtronics Inc.; and Easco Sparcatron; and

3. Change the two existing Members' names as follows: ''Process Control Automation, Inc.'' is changed to ''Hayes-Lemmerz Process Control Automation, Inc.'' and ''Giddings & Lewis, Inc.'' is changed to ''Gilman Engineering & Manufacturing Co.''

Dated: September 13, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–23961 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Issuance of Safe Harbor Principles and Transmission to European Commission; Procedures and Start Date for Safe Harbor List

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice, correction; notice of procedures and start date for the Safe Harbor List.

SUMMARY: This document contains corrections to the final documents which were published in the **Federal Register** on July 24, 2000 (65 FR 45666), relating to the safe harbor privacy framework and the procedures and start date for U.S. organizations to sign up to the safe harbor list. The corrected document and procedures and start date of the safe harbor list can also be found on the International Trade Administration's website (*www.ita.doc.gov/ecom*).

DATES: This correction is effective immediately. The start date for the safe harbor is November 1, 2000.

Background

The final safe harbor privacy principles, Frequently Asked Questions, and related documents were formally issued on July 21, 2000. On July 27, 2000, The European Commission adopted a Decision determining that safe harbor arrangement provides adequate protection for personal data transferred from the EU. Several changes and additional information follow on how U.S. organizations may sign up to the safe harbor list.

FOR FURTHER INFORMATION CONTACT: Further information on the safe harbor can be found at *www.ita.doc.gov/ecom* or by calling the Department of Commerce at 202–482–1614.

Correction of Publication

The publication of the final safe harbor privacy framework as published at 65 FR 45666 is corrected as follows:

Safe Harbor Privacy Principles Issued by the U.S. Department of Commerce on July 21, 2000:

In paragraph 4, the last sentence should read: ''For the same reason, where the option is allowable under the Principles and/or U.S. law, organizations are expected to opt for the higher protection where possible.''

Beginning Date of the Safe Harbor List

U.S. organizations may begin signing up to the safe harbor list at *www.ita.doc.gov/ecom* beginning November 1, 2000. Organizations may either input information into the website or they may send a letter to the Department of Commerce, Attention: Safe Harbor Registration, Room 2009, Washington, DC 20230.

Signing up to the list:

• To be included on the safe harbor list, organizations must notify the Department of Commerce that they adhere to the safe harbor privacy principles developed by the Department of Commerce in coordination with the European Commission. The principles provide guidance for U.S. organizations on how to provide ''adequate protection'' for personal data from Europe as required by the European Union's Directive on Data Protection.

• An organization's request to be put on the safe harbor list, and its appearance on this list pursuant to that request, constitute a representation that it adheres to a privacy policy that meets the safe harbor privacy principles. Organizations must also publicly declare and state in their privacy policies that they adhere to the safe harbor principles.

• Adherence to the safe harbor principles and subscription to the list are entirely voluntary. An organization's absence from the list does not mean that it does not provide effective protection for personal data or that it does not qualify for the benefits of the safe harbor.

• In order to keep this list current, a notification will be effective for a period of twelve months. Therefore, organizations need to notify the Department of Commerce every twelve months to reaffirm their continued adherence to the safe harbor principles.

• Organizations should notify the Department of Commerce if their representation to the Department is no longer valid. Failure by an organization to so notify the Department could constitute a misrepresentation of its adherence to the safe harbor privacy principles and failure to do so may be actionable under the False Statements Act (18 U.S.C. § 1001).

• An organization may withdraw from the list at any time by notifying the Department of Commerce. Withdrawal from the list terminates the organization's representation of adherence to the safe harbor principles, but this does not relieve the organization of its obligations with respect to personal information received prior to the termination.

• If a relevant self-regulatory or government enforcement body finds an organization has engaged in a persistent failure to comply with the principles, then the organization is no longer entitled to the benefits of the safe harbor.

• In order to sign up to the list, organizations may either send a letter signed by a corporate officer to the Department of Commerce or have a corporate officer register on the Department of Commerce's website (www.ita.doc.gov) that provides all information required in FAQ 6.

• In maintaining the list, the Department of Commerce does not assess and makes no representation as to the adequacy of any organization's privacy policy or its adherence to that policy. Furthermore, the Department of Commerce does not guarantee the accuracy of the list and assumes no liability for the erroneous inclusion, misidentification, omission, or deletion of any organization, or any other action related to the maintenance of the list.

Dated: September 13, 2000.

Rebecca J. Richards,

International Trade Specialist, International Trade Administration/Trade Development.

[FR Doc. 00–24003 Filed 2–18–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 091100E]

Availability of a Draft Environmental Assessment and Receipt of Applications for Incidental Take Permits for I.P. Pacific Timberlands, Inc. (I.P. Pacific) Draft Habitat Conservation Plan, Yakima and Klickitat Counties, WA.

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises other agencies and the public that I.P. Pacific has submitted applications to the Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) for Incidental Take Permits (Permits) pursuant to the Endangered Species Act of 1973, as amended (Act). As required by the Act, I.P. Pacific has also prepared a draft Habitat Conservation Plan (HCP) intended to minimize and mitigate any such take of endangered or threatened species. The Permit applications are related to forest land management and timber harvest on 28,388 acres of I.P. Pacific's lands within the Yakama Indian Reservation, located in Yakima and Klickitat Counties, WA.

The Permit applications include the draft HCP and the draft Implementing Agreement. The Services also announce the availability of a draft Environmental Assessment (EA) for the Permit applications. The draft EA and HCP have been combined in a single document with the HCP as the Proposed Action Alternative, Alternative B, termed the Multi-species HCP Alternative.

This notice is provided pursuant to the Act and National Environmental Policy Act (NEPA) regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to the Act.

DATES: Written comments on the permit applications, draft EA, HCP, and Implementing Agreement must be received no later than November 20, 2000.

ADDRESSES: Requests for documents on CD ROM should be made by calling the Fish and Wildlife Service at (360) 534-9330. Hardbound copies are also available for viewing, and partial or complete duplication (see **SUPPLEMENTARY INFORMATION**, under the heading Libraries).

The documents may also be viewed electronically on the World Wide Web at the Fish and Wildlife Service Region 1 HCP Home Page: http://pacific.fws.gov/hcp.

Comments and requests for information should be directed to Tim McCracken, Project Biologist, Fish and Wildlife Service, 215 Melody Lane, Wenatchee, WA 98801, telephone: (509) 665-3505, facsimile: (509)665-3509, or Matt Longenbaugh, Project Biologist,

National Marine Fisheries Service, 510 Desmond Drive, S.E., Suite 103, Lacey, WA 98503-1263, telephone: (360)753-7761; facsimile: (360)753-9517. Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (360) 534-9330.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering.

The proposed Permits would authorize take of the following endangered or threatened species incidental to otherwise lawful activities: northern spotted owl (*Strix occidentalis caurina*), bald eagle (*Haliaeetus leucocephalus*), grizzly bear (*Ursus arctos*), gray wolf (*Canis lupus*), Canada lynx (*Lynx canadensis*), bull trout (*Salvelinus confluentus*), and the mid-Columbia River Evolutionarily Significant Unit of steelhead (*Onchorhyncus mykiss*). The proposed Permits would also authorize future incidental take for 30 currently unlisted species, should they become listed in the future, such as coho salmon (*Onchorhyncus kisutch*), Oregon spotted frog (*Rana pretiosa*).

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Fish and Wildlife Service regulations governing permits for endangered species are promulgated in 50 CFR 17.22 and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. National Marine Fisheries Service regulations governing permits for threatened and endangered species are promulgated in 50 CFR 222.307.

I.P. Pacific owns and manages scattered parcels throughout the upper Klickitat River Basin. The portion of these lands located within the Yakama Indian Reservation are being considered by the Services for coverage under section 10(a) of the Act. I.P. Pacific's ownership proposed for coverage totals 28,388 acres, located near the southwest corner of Yakima County near the town of Glenwood, WA. Proposed management activities include timber harvest and general forest management. Some timber harvest and forest management activities have the potential to affect species subject to protection under the Act. Section 10 of the Act contains provisions for the issuance of permits to non-federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval an HCP containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the HCP will be provided.

I.P. Pacific has developed the draft HCP with technical assistance from the Services to obtain the Permits for their activities on land under their ownership within the boundaries of the Yakama Indian Reservation. Activities proposed for Permit coverage include the following: harvest of trees; silvicultural treatments; site preparation; tree planting; timberland inventory and monitoring; construction, maintenance, and use of logging roads and landings; quarrying stone and gravel; fire prevention and suppression; habitat restoration; use of low-flying aircraft; tribal access; and, aerial spraying of the biological pesticide Bt (*Bacillus thuringiensis*) to control spruce budworm. Clear-cutting of timber will be minimized and used only where necessary to restore sustainable stands. The Permits also propose to cover certain monitoring activities and fish and wildlife surveys within the Plan area.

Federal guidelines regarding tribal trust responsibilities and government-to-government relations with the Yakama Tribe are being closely followed by the Services. The Yakama Tribal Council, Timber Program, and Resources Offices have been consulted throughout the Plan development process to the greatest extent possible. The following three alternatives are currently analyzed in detail in the draft EA: (A) the No Action Alternative; (B) the Proposed Plan Alternative, titled the Multi-species HCP Alternative; and, (C) the Spotted Owl Only Alternative. Under Alternative A, the No Action Alternative, no permit would be issued, take would be avoided for all threatened and endangered species on the property, and Yakama Indian Nation guidelines for protection of riparian areas would be followed. Alternative B, the Multi-species HCP Alternative, involves issuing a Permit authorizing take of seven threatened and endangered species on the property, with provisions for authorizing take for 30 unlisted species in the future should they be listed during the term of the Permits. The Plan details minimization and mitigation measures for these threatened, endangered, and unlisted species. Alternative C, the Spotted Owl Only Alternative, involves the Fish and Wildlife Service issuing a permit for the northern spotted owl only, and I.P. Pacific would continue to follow the Yakama Indian Nation guidelines for protection of riparian areas, as in the No Action Alternative.

Alternatives considered during scoping but which were not analyzed in detail include a Historical Forest Restoration Alternative, a Washington State Forest and Fish Agreement Alternative, an Expanded Covered Species Alternative, and a Northwest Forest Plan Alternative. These four alternatives were not analyzed in detail because they did not meet the stated purpose and needs of the proposed action, which are to provide protection and conservation to listed and proposed species and their habitats to the extent intended under section 10(a)(1)(B) of the Act, while allowing I.P. Pacific to fulfill its forest management and timber harvest planning in a practical manner.

This notice is provided pursuant to section 10(a) of the Act and NEPA regulations. The Services will evaluate the applications, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and NEPA. If it is determined that the requirements are met, a permit will be issued for the incidental take of all covered species. The final permit decisions will be made no sooner than November 20, 2000.

Libraries: Copies of the documents are available at the following libraries: Yakima Valley Regional Library, 102 North 3rd Street, Yakima, WA, 98901 (509) 452-8541; Wenatchee Public Library, 310 Douglas Street, Wenatchee WA, 98801, (509) 664-3910; Seattle Public Library, Government Publications Desk, 1000 4th Avenue, Seattle, WA, (260) 386-4636; Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360) 352-0595; and, White Salmon Valley Community Library, 5 Town and Country Square, White Salmon, WA 98672.

Dated: June 27, 2000.

Don Weathers,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: September 14, 2000.

Wanda Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–24016 Filed 9–18–00; 8:45 am]

BILLING CODES 3510–22–S,4310–55–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

September 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 19, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a notice and letter to the Commissioner of Customs published in the **Federal Register** on May 12, 2000 (65 FR 30571), the Government of the United States increased the limits for all quota categories as a result of the Royal Government of Cambodia's progress in improving working conditions in the Cambodian textile and apparel industries through increased compliance with internationally recognized core labor standards through the application of Cambodian labor law. The limits are being increased further because of Cambodia's continued efforts in this area.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70217, published on December 16, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on September 19, 2000, you are directed to increase the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit[1]
331/631	1,281,945 dozen pairs.
334/634	197,030 dozen.
335/635	82,680 dozen.
338/339	2,956,500 dozen.
340/640	1,001,700 dozen.
345	125,546 dozen.
347/348/647/648	3,427,800 dozen.
352/652	541,961 dozen.
438	108,703 dozen.
445/446	133,320 dozen.
638/639	1,043,100 dozen.
645/646	301,507 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–24107 Filed 9–15–00; 10:57 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

September 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54868, published on October 8, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1,

2000 and extends through December 31, 2000.

Effective on September 20, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,665,473 dozen.
347/348	2,101,601 dozen.
351/651	367,359 dozen.
443	77,312 numbers.
448	51,084 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–24023 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

September 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 19, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special swing, special shift, carryover, carryforward and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62657, published on November 17, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on September 19, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within Fabric Group	
619	6,978,078 square meters.
620	8,554,077 square meters.
Other specific limits	
200	374,953 kilograms.
331/631	2,845,571 dozen pairs.
336/636	636,606 dozen.
338/339	1,428,717 dozen.
341/641	2,112,120 dozen
347/348	611,911 dozen.
350/650	152,842 dozen.
351/651	401,974 dozen.
445/446	34,119 dozen.
604	1,806,331 kilograms.
638/639	613,797 dozen.
645/646	330,399 dozen.
647/648	2,357,865 dozen of which not more than 1,486,940 dozen shall be in Category 647–K [2] and not more than 1,486,940 dozen shall be in Category 648–K [3].
Group II 201, 222–224, 239pt. [4], 332, 352, 359pt. [5], 360–362, 369pt. [6], 400–431, 433, 434, 436, 438–O [7], 440, 443, 444, 447, 448, 459pt. [8], 464, 469pt. [9], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [10], 666, 669pt. [11], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [12], as a group.	49,945,646 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[7] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[8] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[9] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[10] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[11] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[12] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–24022 Filed 9–18–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–62]

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 P.L. 104–614 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 00–62 with attached transmittal and policy justification.

Dated: September 13, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2000

In reply refer to:
I-00/008866

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. 00-62, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $690 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 00-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Saudi Arabia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 690 million
TOTAL	$ 690 million

(iii) **Description of Articles or Services Offered: A continuation of contractor maintenance and training technical services, spare and repair parts, support equipment, modification facilities, and labor to accomplish programmed depot maintenance on their F-15 aircraft.**

(iv) **Military Department: Air Force (QBC)**

(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: none**

(vii) **Date Report Delivered to Congress:** 6 SEP 2000

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Saudi Arabia - Programmed Depot Maintenance for F-15 Aircraft

The Government of Saudi Arabia has requested a possible sale for a continuation of contractor maintenance and training technical services, spare and repair parts, support equipment, modification facilities, and labor to accomplish programmed depot maintenance (PDM) on their F-15 aircraft. The estimated cost is $690 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 contractor maintenance and training technical services will not alter the basic military balance in the region.

Saudi Arabia remains a highly valued, friendly nation and continues to lead the way for improvements in US-Arab relations. Its strategic location, proven oil reserves and moderate stance in the Arab world link its international interests and security with those of the United States. The Royal Saudi Air Force (RSAF) was a valuable participant in the Gulf War coalition and provides a tested deterrent force against aggression in the region.

The Royal Saudi Air Force will use contractor provided organizational and intermediate level maintenance and training services to maintain the operational capabilities of the F-15 aircraft. The PDM effort involves tear down and inspection of complete aircraft components. Any aircraft components will be repaired or replaced if they are found defective. The contractor services will provide for a continuation of the required logistics support through 2008.

The prime contractor will be Al-Salam Aircraft Co. (50% owned by Boeing Co.) of Saudi Arabia. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of six U.S. Government and 50 contractor representatives in-country to support the program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–23984 Filed 9–18–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–63]

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 00–63 with attached transmittal and policy justification.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2000

In reply refer to:
I-00/008867

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. 00-63, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $1.6 billion. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 00-63

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Saudi Arabia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 0 billion**
Other	**$ 1.6 billion**
TOTAL	**$ 1.6 billion**

(iii) **Description of Articles or Services Offered: The continuation of United States Air Force (USAF) and contractor technical services (CTS), spare and repair parts, support equipment, and simulators in support of the Royal Saudi Air Force (RSAF) F-15 aircraft.**

(iv) **Military Department: Air Force (GIH and QBD)**

(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: none**

(vii) **Date Report Delivered to Congress:** 6 SEP 2000

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Saudi Arabia - Contractor Technical Services and Logistical Support

The Government of Saudi Arabia has requested a possible sale for the continuation of United States Air Force (USAF) and contractor technical services (CTS), spare and repair parts, support equipment, and simulators in support of the Royal Saudi Air Force (RSAF) F-15 aircraft. The estimated cost is $1.6 billion.

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 USAF and contractor technical support and services will not alter the basic military balance in the region.

The RSAF will use these support services for the day-to-day operation and maintenance of all their F-15 aircraft. The contractor services and logistics support will provide for a continuation of the required logistics support through CY 03.

The prime contractor will be determined in joint negotiations as the program proceeds. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 10 U.S. Government and 1,000 contractor representatives to Saudi over the life of the three year program for technical assistance services and support. This is a reduction of approximately 275 representatives from the current CTS program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–23985 Filed 9–18–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–67]

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 P.L. 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 00–67 with actual transmittal, policy justification, and Sensitivity of Technology.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2000

In reply refer to:
I-00/008887

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. 00-67, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $73 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 00-67

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*	$ 42 million
Other	$ 31 million
TOTAL	$ 73 million

(iii) **Description of Articles or Services Offered: Co-production of 13 M88A2 heavy recovery vehicle kits, 13 M2 machine guns, spare and repair parts, contractor technical support, support and test equipment, publications, program management, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support.**

(iv) **Military Department: Army (NFQ and UTQ)**

(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:** 6 SEP 2000

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt - Co-production of M88A2 Recovery Vehicle Kits

The Government of Egypt (GOE) has requested a possible sale for co-production of 13 M88A2 heavy recovery vehicle kits, 13 M2 machine guns, spare and repair parts, contractor technical support, support and test equipment, publications, program management, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support. The estimated cost is $73 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 Middle East.

The proposed co-production program with United Defense and the GOE for the M88A2 heavy recovery vehicles will support the M1A1 tanks in their inventory. The vehicles will be used for towing, wrecking, and hoisting operations supporting recovery operations and evacuation of heavy tanks and other tracked combat vehicles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense, Limited Partnership of York, Pennsylvania. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four U.S. Government and 22 contractor representatives for two years to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-67

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 M88A2 recovery vehicles includes the following classified or sensitive components:

a. AVDS-1790-8CR Engine Propulsion System - an unique modification to the standard piston engine family found in the M60 series and the base M88A1. Manufacturing processes associated with the production of turbochargers, fuel injection system, and cylinders are proprietary, and therefore, commercially competition sensitive.

b. Hydraulic System - use of commercially available hydraulic components is not entirely unique in the armored vehicle world. None of the subcomponents of the system are classified. Manufacturing processes associated with winches, hydraulic motors, control valves, and the like are proprietary and therefore, commercially competition sensitive.

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 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. 00–23987 Filed 9–18–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–66]

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 00–66 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2000

In reply refer to:
I-00/008885

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. 00-66, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $416 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 00-66

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 327 million
Other	$ 89 million
TOTAL	$ 416 million

(iii) Description of Articles or Services Offered: Continuation of the U.S. supported effort to modernize Saudi Arabian National Guard (SANG) to include 1,827 TOW 2A missiles; 27 lot acceptance missiles; 104 AN/VRC-90, 45 AN/VRC-92, and 59 AN/PRC-119 advanced tactical communication systems; 21 secure remote sets; five very high frequency RT-1702E receiver transmitter modules; and 132 various Light Armored Vehicles. Also to be included: test and support equipment, adapters, radio, kits, vehicular intercom system, spare and repair parts, publications and technical documentation, personnel training, Field Service Representatives, contractor engineering and technical assistance, and other related elements of logistics support.

(iv) Military Department: Army (ZAC, Amendment 30)

(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: 6 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Continued Modernization of the Saudi Arabian National Guard

The Government of Saudi Arabia has requested a possible sale for the continuation of the U.S. supported effort to modernize Saudi Arabian National Guard (SANG) to include 1,827 TOW 2A missiles; 27 lot acceptance missiles; 104 AN/VRC-90, 45 AN/VRC-92, and 59 AN/PRC-119 advanced tactical communication systems; 21 secure remote sets; five very high frequency RT-1702E receiver transmitter modules; and 132 various Light Armored Vehicles. Also to be included: test and support equipment, adapters, radio, kits, vehicular intercom system, spare and repair parts, publications and technical documentation, personnel training, Field Service Representatives, contractor engineering and technical assistance, and other related elements of logistics support. The estimated cost is $416 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.

Saudi Arabia will use these TOW 2A missiles to augment their current TOW missile inventory as well as use them with the currently fielded missile launchers thereby developing an surface-to-surface anti-armor defense capability. The proposed sale will provide the SANG with the modern command control communications needed to provide security throughout the region. It is consistent with the National Command Authority's intent for stability in the CENTCOM Area of Operation. The radios will modernize equipment and provide the critical VHF and HF links necessary for a large fast moving force and integration with the SINCGAR radios SANG already has fielded in their Light Armored Vehicle and Light Infantry Brigades. The RT-170E receiver transmitter modules will be utilized as direct exchange components to maintain fleet operational readiness.

The principal contractors will be Diesel Division, General Motors of London, Ontario and Raytheon Corporation of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Contractor representatives representing varying technical skills and disciplines will be required to provide in-country support for an extended period of time. The specific requirements for this support will be definitized during program definition between representatives of the United States Government and the purchaser.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-66

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 TOW 2 weapon system including the TOW 2A missiles and documentation are Unclassified. Sensitive technology is contained within the missile system software programs. Some performance characteristics and system capabilities which could be derived from the use of the equipment are classified Secret.

2. The hardware is also considered sensitive and knowledge of the modulation frequency and infrared wavelengths could be useful in developing countermeasures. The highest level of classified material which could be disclosed through reverse engineering or testing of the TOW missile is Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

4. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00–23988 Filed 9–18–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–64]

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 00–64 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2000

In reply refer to:
I-00/008868

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. 00-64, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $81 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 00-64

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Singapore**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 3 million
Other	$ 78 million
TOTAL	$ 81 million

(iii) **Description of Articles or Services Offered: Twenty M61A1 20mm guns and 22 Global Positioning Systems (GPS), spares and repair parts, software development/integration, flight test instrumentation, support equipment, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Air Force (NCS)**

(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:** 6 SEP 2000

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Singapore - M61A1 20mm Guns and Global Positioning System

The Government of Singapore has requested a possible sale of 20 M61A1 20mm guns and 22 Global Positioning Systems (GPS), spares and repair parts, software development/integration, flight test instrumentation, support equipment, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $81 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 Southeast Asia.

Singapore plans to use the guns and GPS on their F-16D Block 52 aircraft which are being procured by a direct commercial sales. Singapore will use these support services for the day-to-day operation and maintenance of all their F-16 aircraft. Singapore will have no difficulty absorbing these guns and systems into their armed forces.

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 Aeronautics Company of Fort Worth, Texas. 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 or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-64

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 Global Positioning System/Inertial Navigation System (EGI) is for installation on commercially procured F-16s. The EGI is a navigation system that includes a ring laser gyro (RLG)-type inertial sensor with an embedded Global Positioning System (GPS). GPS is a space-based worldwide, precise positioning, velocity, and timing system. It provides an unlimited number of suitably equipped passive users with a force-enhancing, common-grid, all-weather, continuous, three-dimensional, positioning, navigation, and timing capability. The GPS Joint Program Office (JPO) is responsible for approving EGI security configurations. All EGI configurations/components procured under this proposed sale will meet JPO security approval as unclassified/controlled when keyed. The EGI uses COMSEC to increase its accuracy, which is managed and controlled by the USG.

2. If a technologically advanced adversary were to obtain knowledge of the above systems, such knowledge could be used in an attempt to develop component countermeasures or systems with similar or advanced capabilities.

3. A determination has been made that the recipient country 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. 00–23989 Filed 9–18–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF THE DEFENSE

Office of the Secretary

[Transmittal No. 00–65]

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 Pub. L. 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 00–65 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2000

In reply refer to:
I-00/008869

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. 00-65 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Finland for defense articles and services estimated to cost $415 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

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. 00-65

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Finland

(ii) Total Estimated Value:

Major Defense Equipment*	$ 343 million
Other	$ 72 million
TOTAL	$ 415 million

(iii) Description of Articles or Services Offered: Fifty complete AVENGER Fire Units, 424 STINGER Block I International Missile Round Complete, 50 STINGER Block I International Weapon Round Partial, nine SENTINEL radars, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U. S. Government Quality Assurance Teams and other related elements of logistics support.

(iv) Military Department: Army (UBV, UBT, UBU, and UBS)

(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: 6 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Finland - AVENGER Fire Units

The Government of Finland has requested a possible sale of 50 complete AVENGER Fire Units, 424 STINGER Block I International Missile Round Complete, 50 STINGER Block I International Weapon Round Partial, nine SENTINEL radars, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U. S. Government Quality Assurance Teams and other related elements of logistics support. The estimated cost is $415 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 Europe.

Finland will replace its Soviet-era SA-14/16 Surface-to-Air Missile Systems with the STINGER, AVENGER, and SENTINEL systems and will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors who will participate in this program are Boeing Company of Huntsville, Alabama; Raytheon Company of Tucson, Arizona; and Forward Area Air Defense Command, Control and Intelligence TRW of Redondo Beach of California. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of six contractor representatives to Finland for five years. There will be nine U.S. Government or contractor representatives for two weeks, twice annually, to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-65

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. STINGER Block I International Missile System (Manportable and AVENGER) (gripstock, hardware, software, and documentation) contains sensitive technology and is classified up to Secret. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential. Missile system hardware and fire unit components contain sensitive/critical technologies. Critical technologies for these systems are primarily design and production know-how, not hardware or reverse engineering. STINGER critical technologies include: magnetic and amorphous metals; optical coating technology; semi-conductor detectors; printed circuit boards; hybrid microcircuits; preparation, purification, compounding and handling of electronic, electro-optic, and optical materials; cryogenic cooling technology; ultraviolet sensor technology; infrared band sensors; primary and reserve battery; energetic materials formulation technology; energetic materials fabrication and loading technology; energetic materials and components test technology; warhead components and systems; and target classification, recognition, and identification system for the Identification Friend or Foe (IFF) Interrogator. AVENGER critical technologies include electronic control assembly/integrated electronics assembly (ECS/IEA); laser range finder; Forward Looking Infrared Radar (FLIR); and the Captive Flight Trainer (CFT). SENTINEL critical technology is also in the IFF interrogator.

2. The AN/MPQ-64 SENTINEL radar is a new generation, I/J-band, 3-Dimensional radar for the U.S. Army Forward Area Air Defense System (FAADS). It is used to generate track data to inform FAADS weapons of the location of targets approaching their front-line forces. Based on the TPQ-36A radar, the AN/MPQ-64 is the key to air surveillance and provides target acquisition/tracking information for division and corps weapons. The export version of SENTINEL radar hardware and software is Unclassified individually. The system classification is Confidential when software is loaded into the hardware.

3. Information on STINGER (Manportable and AVENGER) and SENTINEL vulnerability to electronic countermeasures and counter-countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret. Loss of this hardware and or data could permit the development of information leading to the exploitation of countermeasures.

[FR Doc. 00–23993 Filed 9–18–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Ballistic Missile Defense Advisory Committee

ACTION: Notice.

SUMMARY: The Ballistic Missile Defense Advisory Committee (BMDAC) has been renewed in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the ''Federal Advisory Committee Act.''

The BMDAC provides the Director, Ballistic Missile Defense Organization and the Secretary of Defense with advice and insights into the ballistic missile defense program, and makes recommendations on the program emphasis, schedule and content. The BMDAC assesses all matters relating to acquisition system development, and technology for defense against ballistic missile threat.

The Committee will continue to be composed of 15–20 leaders from government and the private sector who are recognized authorities in defense policy, acquisition and technical areas related to the ballistic missile defense program. Efforts will be made to ensure

that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

DATES: August 17, 2000.

FOR FURTHER INFORMATION: Please contact Ms. Shirley Beeken at 703–604–0061.

Dated: September 12, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23990 Filed 9–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Defense Finance and Accounting Service (DFAS) Board of Advisors

ACTION: Notice of establishment.

SUMMARY: The DFAS Board of Advisors is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' Title 5 U.S.C., Appendix 2.

This advisory committee will provide advice and recommendations to the Secretary of Defense and Deputy Secretary of Defense regarding the streamlining and modernization of DFAS as it transforms its financial management operations, processes and systems. Goals include making the organization as effective and economical as feasible, responsive to the needs of decision makers, compliant with statutes, safeguarded against fraud and abuse and a leader in customer service. The Board will make recommendations concerning the best allocation and expenditure of funds and the speed and shape of DFAS reform.

The DFAS Board of Advisors will consist of a balanced membership of approximately ten senior executives and flag rank military officers, as well as several representatives from the private sector appointed by the Secretary of Defense.

FOR FURTHER INFORMATION CONTACT: John S. Mester, DFAS General Counsel, 703–607–5021.

Dated: September 12, 2000.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23992 Filed 9–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Group of Advisors to the National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: October 3, 2000.

ADDRESSES: Academy for Educational Development, 1825 Connecticut Avenue, NW., Washington, DC 20009–5721.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: colliere@ndu.edu.

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23986 Filed 9–18–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the DoD Interim Policy on Land Use Controls Associated With Environmental Restoration Activities

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of the release of the DoD Interim Policy on Land Use Controls Associated with Environmental Restoration Activities. This policy, signed on August 31, 2000, by Ms. Sherri Goodman, Deputy Under Secretary of Defense (Environmental Security), provides an overall DoD framework for implementing, documenting, and managing land use controls (LUCs) for real property that is transferred out of Federal control and for active installations. The policy is available in the Publications section of the DoD Environmental Cleanup Homepage on the World Wide Web. The internet address for the homepage is http://www.dtic.mil/envirodod/.

FOR FURTHER INFORMATION CONTACT: Mr. Shah Choudhury, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301–3400; telephone (703) 697–7475; e-mail choudhsa@acq.osd.mil.

Dated: September 13, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23991 Filed 9–18–00; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 13, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Federal Class Size Reduction Program.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,298.

Burden Hours: 1,044.

Abstract: For the past two years, the federal government has supported an effort to promote the hiring of high quality teachers to reduce the size of classrooms in the early elementary grades. This evaluation looks at the early implementation of the program and assesses how the federal class size reduction (CSR) funds were spent, what issues arose in implementing the program, the impact of the program on class size, and the impact of the program on teaching.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel

AGENCY: Department of Energy (DOE).

ACTION: Record of Decision (ROD).

SUMMARY: DOE has issued a Final Environmental Impact Statement for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel (final EIS) (Notice of Availability, 65 FR 47987, August 4, 2000) (DOE/EIS–0306, July 2000). After careful consideration of public comments on the draft EIS and programmatic, environmental, nonproliferation, and cost issues, DOE has decided to implement the preferred alternative identified in the final EIS. That is, DOE has decided to electrometallurgically treat the Experimental Breeder Reactor-II (EBR–II) spent nuclear fuel (about 25 metric tons of heavy metal) and miscellaneous small lots of sodium-bonded spent nuclear fuel. The fuel will be treated at Argonne National Laboratory-West (ANL–W). Because of the different physical characteristics of the Fermi-1 sodium-bonded blanket spent nuclear fuel (about 34 metric tons of heavy metal), DOE has decided to continue to store this material while alternative treatments are evaluated. Should no alternative prove more cost effective for this spent nuclear fuel, electrometallurgical treatment (EMT) of the Fermi-1 spent nuclear fuel remains a key option.

ADDRESSES: The final EIS and this ROD are available on the Office of Environment, Safety and Health National Environmental Policy Act (NEPA) home page at http://www.tis.eh.doe.gov/nepa/ or on the Office of Nuclear Energy, Science and Technology home page at http://nuclear.gov. You may request copies of the final EIS and this ROD by calling the toll-free number 1–877–450–6904, by faxing requests to 1–877–621–8288, via electronic mail to sodium.fuel.eis@hq.doe.gov, or via mail to: Susan Lesica, Document Manager, Office of Nuclear Energy, Science and Technology, NE–40, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: For information on the alternative strategies for the treatment and management of sodium-bonded spent nuclear fuel, contact Susan Lesica at the address listed above. For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

For nearly four decades, research, development, and demonstration activities associated with liquid metal fast breeder reactors were conducted at EBR–II, about 40 miles west of Idaho Falls, Idaho; the Enrico Fermi Atomic Power Plant (Fermi-1) in Monroe, Michigan; and the Fast Flux Test Facility at the Hanford Site in Richland, Washington. These activities generated approximately 60 metric tons of heavy metal of sodium-bonded spent nuclear fuel for which DOE is now responsible for safe management and disposition.

Sodium-bonded spent nuclear fuel is distinguished from other nuclear reactor spent nuclear fuel by the presence of metallic sodium (a highly reactive material), metallic uranium and plutonium (which are also potentially reactive), and in some cases, highly enriched uranium. Metallic sodium in particular presents challenges for management and ultimate disposal of this spent nuclear fuel. Metallic sodium reacts with water to produce explosive hydrogen gas and corrosive sodium hydroxide that would likely not be acceptable for geologic disposal.

DOE's sodium-bonded spent nuclear fuel is of two general types: driver fuel and blanket fuel. Driver fuel is used mainly in the center of the reactor core to ''drive'' and sustain the fission chain reaction. Blanket fuel is usually placed at the outer perimeter of the core and is used to breed plutonium-239, a fissile material, and for shielding. The blanket and driver fuel addressed in this ROD contain metallic sodium between the cladding (outer layer) and the metallic fuel pins to improve heat transfer from the fuel to the reactor coolant through the cladding. When the driver fuel is irradiated for some period of time, the metallic fuel swells as fission products are generated until it reaches the cladding wall. During this process, metallic sodium enters the metallic fuel and becomes inseparable from it. In addition, fuel and cladding components interdiffuse to such an extent that mechanical stripping of the driver spent nuclear fuel cladding is not a practical

means of removing the sodium. On the other hand, when blanket fuel is irradiated, the metallic fuel does not swell to the same degree as the driver fuel because less fission occurs, producing fewer fission products (i.e., lower ''burnup''). As a result, minimal metallic sodium enters the fuel and there is no interdiffusion between the fuel and cladding. This allows mechanical stripping of the blanket spent nuclear fuel cladding. Because of these differences between irradiated driver fuel and blanket fuel, there are different treatment alternatives for each fuel type.

There are approximately 60 metric tons of heavy metal in the DOE's inventory of sodium-bonded spent nuclear fuel. The inventory includes 25 metric tons of heavy metal of fuel from EBR–II, of which three metric tons of heavy metal are driver fuel and 22 metric tons of heavy metal are blanket fuel. EBR–II fuel is stainless steel clad and is stored at the Idaho National Engineering and Environmental Laboratory (INEEL). The EBR–II driver fuel contains highly enriched uranium in a uranium alloy, typically either zirconium or fissium (an alloy of molybdenum, ruthenium, rhodium, palladium, zirconium, and niobium). The EBR–II blanket fuel contains depleted uranium in metallic form. Approximately 34 metric tons of heavy metal are blanket fuel from the Fermi-1 reactor and are stored at INEEL. This blanket fuel consists of stainless steel-clad, depleted uranium in a uranium-molybdenum alloy. Fermi-1 blanket elements are similar to EBR–II blanket elements in enrichment but differ in dimensions (Fermi-1 elements are larger), form (Fermi-1's uranium-molybdenum alloy versus EBR–II's uranium metal), and burnup. Because of its lower burnup, the Fermi-1 blanket fuel, which contains only about 0.2 percent plutonium by weight compared to approximately 1 percent plutonium by weight for the EBR–II blanket fuel, is subject to less stringent safeguard and security requirements than the EBR–II blanket fuel. This is an important consideration in the cost of storing these two fuel types.

The remainder of the DOE's sodium-bonded spent nuclear fuel inventory consists of small lots of miscellaneous sodium-bonded fuel, with a combined weight of approximately 400 kilograms of heavy metal (or 0.4 metric tons of heavy metal). Three hundred kilograms of this miscellaneous fuel are from liquid metal reactor test assemblies containing driver fuel that were irradiated at the Fast Flux Test Facility. The remaining 100 kilograms of heavy metal are small quantities of fuel from liquid metal reactor experiments that have metallic sodium or an alloy of sodium and potassium. These fuels differ in cladding composition, uranium content, enrichment, and burnup. Some of the fuel consists of uranium and/or plutonium carbides, nitrides, and oxides in addition to metal uranium or uranium alloy. This fuel is stored at several DOE sites, including the Hanford Site, Oak Ridge National Laboratory, Savannah River Site (SRS), Sandia National Laboratories, and INEEL. Those lots stored outside INEEL will be transported to INEEL pursuant to the Record of Decision (60 FR 28680, June 1, 1995) for the Programmatic Spent Nuclear Fuel EIS (DOE/EIS–0203, April 1995).

Before electrometallurgical treatment could be considered as a technology choice for treating EBR–II spent nuclear fuel, an appropriate demonstration project was needed to evaluate its technical feasibility. As a preliminary step to demonstration, DOE requested that the National Research Council conduct an independent assessment of electrometallurgical treatment technology and its potential application to EBR–II spent nuclear fuel. In its report, published in 1995, the National Research Council recommended that DOE proceed with demonstrating the technical feasibility of electrometallurgical treatment using a fraction of the EBR–II spent nuclear fuel. DOE then conducted an environmental assessment of the demonstration project. The environmental assessment was completed in May 1996 and resulted in a Finding of No Significant Impact. In June 1996, DOE initiated a three-year testing program at ANL–W to demonstrate the technical feasibility of electrometallurgical treatment of up to 100 EBR–II driver spent nuclear fuel assemblies and up to 25 EBR–II blanket spent nuclear fuel assemblies. The two types of EBR–II spent nuclear fuel, driver and blanket, are typical of most of DOE's sodium-bonded spent nuclear fuel.

Working with DOE and the National Research Council review committee, ANL–W established four criteria for evaluating the demonstration. Upon completion of the demonstration, all key performance criteria were met or exceeded, proving the technical feasibility of using electrometallurgical treatment technology to treat sodium-bonded spent nuclear fuel. In addition, the demonstration project validated the throughput rate of the sodium-bonded spent nuclear fuel, quantified all process streams, fine-tuned the operational parameters, refined the electrometallurgical treatment equipment, and provided actual waste forms for characterization.

DOE is now at the point of deciding how to manage the sodium-bonded spent nuclear fuel to facilitate its ultimate disposal in a geologic repository. The reasonable alternatives for this proposed action are predicated on the technology options available to DOE. There is some risk in implementing any alternative in that the resultant waste form may still not be acceptable for disposal in a geologic disposal. DOE currently is studying Yucca Mountain in Nevada as a potential site for development of a geologic repository. Under current schedules, final waste acceptance criteria would not be available until about 2005, and then only if a decision has been made to proceed with development of a repository at Yucca Mountain and the Nuclear Regulatory Commission issues a licence to construct the repository. The preliminary waste acceptance criteria for Yucca Mountain are used as a basis for planning treatment of the sodium-bonded spent nuclear fuel.

Currently, more than 98 percent of DOE's sodium-bonded spent nuclear fuel is located at INEEL, near Idaho Falls, Idaho. DOE committed to remove all spent nuclear fuel from Idaho by 2035 in a 1995 agreement with the State of Idaho (Settlement Agreement and Consent Order issued on October 17, 1995, in the actions of *Public Service Co. of Colorado* v. *Batt,* No. CV 91–0035–S–EJL [D. Id.], and *United States* v. *Batt,* No. CV 91–0054–EJL [D. Id.]). Before sodium-bonded spent nuclear fuel can be removed from the State of Idaho for ultimate disposal, some or all of the fuel may require treatment.

Purpose and Need for Agency Action

Sodium-bonded spent nuclear fuel contains metallic sodium that was used as a heat-transfer medium within the stainless steel cladding (outer layer) of the nuclear fuel. While sodium has been removed from the fuel's external surface, some sodium remains bonded to the uranium metal alloy fuel within the cladding and cannot be removed without further treatment. This sodium could complicate compliance with the eventual final repository waste acceptance criteria. Metallic sodium reacts vigorously with water, producing heat, potentially explosive hydrogen gas, and sodium hydroxide, a corrosive substance. Sodium is also pyrophoric (i.e., susceptible to spontaneous ignition and continuous combustion). Most (i.e., 99 percent by weight) of the sodium-

bonded spent nuclear fuel contains metallic uranium and plutonium. These metals are reactive in the presence of air and moisture. The Yucca Mountain preliminary waste acceptance criteria exclude reactive and potentially explosive materials beyond trace quantities. Additionally, some of the sodium-bonded spent nuclear fuel contains highly enriched uranium that could create criticality (that is, a self-sustained nuclear chain reaction) concerns requiring control methods.

To ensure that the terms of the State of Idaho Settlement Agreement and Consent Order are met and to facilitate disposal, DOE needs to reduce the uncertainties associated with qualifying sodium-bonded spent nuclear fuel for disposal. Treating the sodium-bonded spent nuclear fuel could make it significantly easier to dispose of the fuel. In addition, DOE could significantly reduce the safeguard and security costs associated with long-term storage of the EBR–II blanket spent nuclear fuel, due to its high plutonium content, by treating the fuel. Furthermore, delaying the implementation of this decision could result in a loss of capability and of technical staff knowledgeable about and experienced with the demonstration project. This was an important consideration in the decision to proceed with this NEPA review.

NEPA Process

On February 22, 1999, DOE published in the **Federal Register** a Notice of Intent to prepare an Environmental Impact Statement for Electrometallurgical Treatment of Sodium-Bonded Spent Nuclear Fuel in the Fuel Conditioning Facility at Argonne National Laboratory-West (64 FR 8553). During the 45-day scoping period, DOE received 228 comments on the proposed scope of the EIS via mail, telephone, facsimile, and during the four public scoping meetings. DOE considered these comments and, as a result, changed the proposed action of the EIS as well as the structure of the alternatives. The proposed action was changed from electrometallurgical treatment of sodium-bonded spent nuclear fuel at the Fuel Conditioning Facility at ANL–W to the treatment and management of sodium-bonded spent nuclear fuel. This change was made to address concerns about bias for one treatment technology over others. The alternatives were restructured to reflect differences in the characteristics of the sodium-bonded spent nuclear fuel types. Thus, several alternatives were added that treat blanket and driver spent nuclear fuel by different technologies.

In July 1999, DOE published the Draft Environmental Impact Statement for the Treatment of Sodium-Bonded Spent Nuclear Fuel. The 45-day comment period began on July 31, 1999, and was scheduled to end on September 13, 1999. In response to commentor requests, the comment period was extended an additional 15 days through September 28, 1999. Four public hearings were held during the comment period. A total of 494 comments were received and considered, and responses can be found in the final EIS, which was issued in July 2000. Most of these comments focused on the following issues: (1) The purpose, need for, and timing of the proposed action; (2) new waste forms produced by the proposed action, their acceptability in a geologic repository, and the disposition of uranium and plutonium by-products; (3) the public availability of information considered relevant to reviewing the draft EIS; (4) the cost of the various alternatives; (5) the impacts of the proposed action on U.S. nuclear nonproliferation policy; (6) technical or NEPA-related issues regarding technologies and alternatives; and (7) issues related to the affected environment and the environmental consequences. Volume 2, Section A.2 of Appendix A of the final EIS provides an overview of the public hearings and DOE's responses to all comments. No comments have been received on the final EIS.

II. Treatment Technology Options

EMT Process

The EMT process uses electrorefining, an industrial technology used to produce pure metals from impure metal feedstock. Electrorefining has been used to purify metal for more than 100 years. The electrometallurgical process for treatment of EBR–II blanket and driver spent nuclear fuel assemblies containing metallic fuel was developed at Argonne National Laboratory. The process has been demonstrated for the stainless steel clad uranium alloy fuel used in EBR–II. Modifications to the process could be used for the treatment of oxide, nitride, and carbide sodium-bonded spent nuclear fuel. The fuel would be chopped, placed in molten salt, and electrorefined. After electrorefining, the molten salt, fission products, sodium, and transuranics, including plutonium, would be removed from the electrofiner, mixed with a filter and ion-exchange agent known as zeolite, and heated so the salt becomes sorbed into the zeolite structure. Glass powder then would be added to the zeolite mixture and consolidated to produce a ceramic high-level radioactive waste form. The uranium would be removed, melted (and depleted uranium would be added, if necessary), and processed in a metal casting furnace to produce low-enriched or depleted uranium ingots. The ingots would be stored until a disposition decision is made through a separate NEPA review. The stainless steel cladding hulls and the insoluble fission products would be melted in the casting furnace to produce a metallic high-level radioactive waste form.

Plutonium Uranium Extraction (PUREX) Process

The PUREX process has been used extensively throughout the world since 1954 to separate and purify uranium and plutonium from fission products contained in spent nuclear fuel and irradiated uranium targets. It is a chemical separation process that uses aqueous solvent extraction to perform the separation. DOE has two operating facilities at the SRS, F-Canyon and H-Canyon, that use the PUREX process. Use of these facilities for treating sodium-bonded spent nuclear fuel involves certain restrictions inherent in the design: (1) The sodium complicates the process as employed in the SRS facilities; (2) the stainless steel cladding would require significant modifications or additions to the existing facilities; and (3) the presence of alloys (*e.g.,* zirconium) is incompatible with the SRS dissolution process. For this reason, treatment of driver sodium-bonded spent nuclear fuel is not feasible without significant modification to the existing PUREX process. However, the F-Canyon facility could be used without modifications for the blanket sodium-bonded spent nuclear fuel if the spent nuclear fuel were declad and the sodium were removed prior to the process.

After processing, the following would be produced: (1) An aqueous high-level radioactive waste containing the bulk of the fission products, americium, and neptunium; (2) a material stream containing the recovered plutonium (as plutonium metal); and (3) a material stream containing the recovered uranium (as uranium oxide). The aqueous high-level radioactive waste would be processed to a borosilicate glass form. The uranium oxide would be stored on site as depleted uranium. The plutonium would be disposed of in accordance with the ROD (65 FR 1608, January 11, 2000) for the Surplus Plutonium Disposition Final Environmental Impact Statement (DOE/EIS–0283, November 1999).

High-Integrity Can Packaging

High-integrity can packaging would provide substitute cladding for damaged or declad fuel and another level of containment for intact fuel. The can is constructed of a highly corrosion-resistant material to provide corrosion protection during storage. The high-integrity cans are placed into standardized canisters that are ready for disposal in waste packages. High-integrity cans would be used to store the sodium-bonded spent nuclear fuel on site until it can be shipped to a repository.

The EIS analysis for packaging sodium-bonded spent nuclear fuel in high-integrity cans was performed with and without decladding and/or sodium removal. Packaging sodium-bonded blanket spent nuclear fuel in high-integrity cans with sodium removal was analyzed in the EIS under Alternative 2. Packaging sodium-bonded spent nuclear fuel in high-integrity cans without sodium removal was considered in the EIS as a direct disposal option under the No Action Alternative. The high-integrity cans would be placed in dry storage at ANL–W. They would be placed into a standardized canister for transportation and eventual placement in waste packages in a geologic repository.

Melt and Dilute Process

The melt and dilute process involves chopping and melting the spent nuclear fuel and diluting it by adding depleted uranium or other metals. There are three options for the melt and dilute process that are applicable to sodium-bonded spent nuclear fuel. In the first option, bare uranium blanket spent nuclear fuel pins with the sodium removed would be melted with aluminum at SRS using technology similar to the technology that DOE selected in the ROD (65 FR 48224, August 7, 2000) for the treatment of aluminum-clad research reactor fuel at SRS. The second and third options would be conducted at ANL–W using metallurgical technology developed for uranium and stainless steel cladding. In the second option, blanket spent nuclear fuel elements would be melted with the cladding and additional stainless steel. In the first two options, dilution of the fissile component of the uranium would not be needed because it is present in amounts far less than in natural uranium. The third option would involve developing a new melt and dilute process capable of handling sodium volatilized from processing the chopped driver spent nuclear fuel elements with the sodium and cladding intact. In this process option, the fuel and stainless steel would be melted under a layer of material such as molten salt to oxidize the molten sodium. The process can be used for the metallic sodium-bonded spent nuclear fuel. The non-metallic uranium nitride, oxide, and carbide sodium-bonded spent nuclear fuel cannot be treated with this process because of their high melting points.

III. Alternatives

The following alternatives were analyzed in the EIS.

Alternative 1—Both driver and blanket fuel would be treated using EMT at ANL–W.

Alternative 2—EMT would be used at ANL–W to treat the driver fuel. The sodium from the blanket fuel would be removed without decladding, and the blanket elements would be packaged in high-integrity cans. Sodium removal and packaging would occur at ANL–W.

Alternative 3—EMT would be used at ANL–W to treat the driver fuel. The fuel pins in the blanket fuel would be separated from the cladding and cleaned to remove metallic sodium at ANL–W. The cleaned fuel pins would be shipped to SRS for treatment using the PUREX process at the F-Canyon facility.

Alternative 4—EMT would be used at ANL–W to treat the driver fuel. The metallic sodium would be removed from the blanket fuel without decladding. Then the elements would be treated using the melt and dilute process. All treatment would occur at ANL–W.

Alternative 5—EMT would be used at ANL–W to treat the driver fuel. The fuel pins in the blanket fuel would be separated from the cladding and cleaned to remove the metallic sodium at ANL–W. Then they would be shipped to SRS and treated using the melt and dilute process.

Alternative 6—Both the driver and blanket fuel would be treated at ANL–W using the melt and dilute process, which would be modified slightly for each fuel type.

No Action Alternative

Under the No Action Alternative, all or part of the sodium-bonded spent nuclear fuel would not be treated (no sodium would be removed), except for stabilization activities that may be necessary to prevent potential degradation of some of the spent nuclear fuel. Two options were analyzed: (1) the sodium-bonded spent nuclear fuel would continue to be stored until 2035 at its current location, subject only to activities dictated by the amended ROD (61 FR 9441, March 1996) for the Programmatic Spent Nuclear Fuel EIS and other existing site-specific NEPA documentation or until another technology, currently dismissed as an unreasonable alternative because it is less mature (*e.g.,* Glass Material Oxidation and Dissolution System (GMODS) or plasma arc), is developed; and (2) the sodium-bonded spent nuclear fuel would be disposed of directly in a geologic repository without treatment. The fuel would be packaged in high-integrity cans without sodium removal. Option 2 would not meet current DOE or Nuclear Regulatory Commission (10 CFR 60.135) repository acceptance criteria.

Preferred Alternative

In the final EIS, DOE identified electrometallurgical treatment as its preferred alternative for the treatment and management of all sodium-bonded spent nuclear fuel, except for the Fermi-1 blanket fuel. The No Action Alternative is preferred for the Fermi-1 blanket spent nuclear fuel. Thus, the preferred alternative is a combination of Alternative 1 and the No Action Alternative.

IV. Alternatives Considered But Dismissed

In identifying the reasonable alternatives for evaluation in the EIS, two separate issues led to the determination of alternatives that were considered and dismissed: (1) the level of maturity of the alternative technologies and (2) the level of effort required to modify an existing facility to implement a specific technology. The construction of new facilities when existing facilities are still operational was not considered a reasonable option because of cost implications. The GMODS process and the direct plasma arc-vitreous ceramic process are not as mature as the electrometallurgical, melt and dilute, and PUREX processes when applied to sodium-bonded spent nuclear fuel. The GMODS and plasma arc processes both require extensive research and development before they can be proven successfully to treat sodium-bonded spent nuclear fuel. The GMODS and plasma arc-vitreous ceramic processes each present specific technological challenges that cannot be answered without demonstration in pilot-scale plants. In comparison, the melt and dilute process is being tested and evaluated and has been selected for treatment of aluminum-clad spent nuclear fuel at SRS. However, use of the melt and dilute process for sodium-bonded driver spent nuclear fuel would require some technology enhancements. In addition, unlike the other technologies that would not require new

construction, both of these technologies (*i.e.,* GMODS and plasma arc) would require the installation of large, specialized equipment in new hot cell facilities, the size and complexity of which are not determined sufficiently to allow detailed environmental impact analysis.

V. Summary of Environmental Impacts

This section summarizes the environmental impacts associated with the No Action Alternative and the six alternatives under the proposed action that were evaluated in the EIS. For the No Action Alternative and the six alternatives evaluated, the necessary facilities already exist. Except for internal building modifications and new equipment installation, no construction activities would be required. Therefore, the proposed action would have little or no impact on land resources, visual resources, noise, geology and soils, ecological resources, and cultural and paleontological resources.

For the alternatives evaluated, the analyses showed that there would be no significant impacts on air quality, water resources, socioeconomics, public and occupational health and safety, environmental justice, and transportation. The radiological and nonradiological gas and liquid releases, as well as the associated exposures to workers and the public, would be well within regulatory standards and guidelines.

A fundamental assumption made under the No Action Alternative is that the sodium-bonded spent nuclear fuel will eventually be disposed of in a manner similar to the rest of the spent nuclear fuel owned by DOE and within the time period over which institutional controls could reliably be assumed to be in effect. If the sodium-bonded spent nuclear fuel has not been disposed of before 2035, the temporarily stored fuel would be removed from the State of Idaho by the year 2035. Should such removal be necessary, the potential environmental impacts would be evaluated in a separate NEPA review. The continued storage of sodium-bonded spent nuclear fuel in the State of Idaho or elsewhere, beyond time periods for which institutional controls could reliably be assumed to be effective, could lead to significant impacts to the environment and the health and safety of the public from radioactive releases caused by the gradual degradation of the fuel and its containment.

VI. Environmentally Preferred Alternative

As discussed in the previous section, the environmental impact analysis indicates that none of the action alternatives would result in significant environmental impacts. Further, small differences in potential environmental impacts among the alternatives do not provide a strong basis to discriminate among them. The following discusses some of the small differences.

Transportation: Alternatives involving treatment at ANL–W would avoid the need to transport spent nuclear fuel to SRS, notwithstanding that the analysis shows that the risks associated with such transportation are small.

Waste and Material Streams: The alternatives differ with respect to the quantities and types of waste streams and material that would be produced. The EIS presents a comparison of the volumes of high-level radioactive, low-level radioactive, and transuranic waste for each alternative (e.g., see Table S–4 on Page S–44).

- *High-Level Waste.* All of the alternatives would result in some form of spent nuclear fuel or high-level waste requiring storage and disposal. PUREX processing would generate liquid high-level waste that would require storage and eventual treatment by vitrification into glass canisters at the SRS. DOE regards the alternative using this technology option as less environmentally preferred than the other action alternatives, primarily because it is the only alternative that would generate liquid high-level waste. On the other hand, the volume of glass high-level waste ultimately produced that would require disposal in a geologic repository would be smaller than the volume of spent nuclear fuel and high level waste under any of the other alternatives. Also, this waste form has been tested and analyzed extensively under potential repository conditions.

Electrometallurgical treatment would produce two new high-level waste forms (i.e., metallic and ceramic), and the melt and dilute process also would produce a new metallic form (*i.e.,* a melt and dilute product). DOE expects that these waste forms and high-integrity cans that do not contain metallic sodium would be suitable for disposal in a geologic repository.

- *Low-Level and Transuranic Waste.* With the exception of Alternative 2, all of the action alternatives would generate greater volumes of low-level and transuranic waste than the No Action Alternative. Existing waste management infrastructure is adequate to safely manage these wastes under all of the alternatives, and the EIS shows that the associated environmental impacts would be small.
- *Other Material Streams.* Two of the treatment technology options would generate other material streams requiring storage and disposition. Electrometallurgical treatment would produce low-enriched and depleted uranium ingots, which would be stored safely pending decisions on their ultimate disposition. PUREX processing would generate uranium oxide and plutonium metal. The uranium oxide would be stored at SRS as depleted uranium, and the plutonium would be subject to the Record of Decision for the Surplus Plutonium Disposition Final Environmental Impact Statement.

Long-Term Uncertainties: The No Action Alternative would result in the least environmental impacts in the short-term. However, under the No Action Alternative metallic sodium would not be removed or converted to a non-reactive form and would pose long-term risks. Further, if treatment were required in the future to remove or deactivate the sodium, the associated environmental impacts would be incurred then. In contrast, all of the action alternatives would either remove or convert the metallic sodium into a non-reactive form, which would reduce the risks associated with long-term storage and uncertainties regarding disposal.

VII . Other Considerations

In addition to environmental issues, DOE considered other issues in determining the treatment and disposition path of sodium-bonded spent nuclear fuel. Among these are cost, nuclear proliferation concerns, and the National Research Council's independent review of electrometallurgical techniques, including the research and demonstration project.

DOE's Cost Study of Alternatives Presented in the Draft Environmental Impact Statement for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel showed that the lowest cost alternative was the direct disposal option under the No Action alternative. However, untreated sodium-bonded spent nuclear fuel does not meet current DOE or Nuclear Regulatory Commission repository acceptance criteria requirements. The cost study also concluded that the cost of alternatives 1, 2, and 3 are similar and difficult to distinguish from each other, as are the costs of alternatives 4, 5, and 6. This is due to an incomplete understanding of

the technical requirements for the treatment technology, uncertainty in the repository waste acceptance criteria, and unquantifiable programmatic risks associated with some of the alternatives.

After reviewing the various alternatives, DOE's Office of Arms Control and Nonproliferation concluded that ''All but one alternative—the one involving plutonium-uranium extraction reprocessing at the SRS—are fully consistent with U.S. policy with respect to reprocessing and nonproliferation.'' (DOE/Office of Arms Control and Nonproliferation, Nonproliferation Impacts Assessment for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel, July 1999)

The National Research Council's final report on Electrometallurgical Techniques for DOE Spent Fuel Treatment (April 2000) concluded that ''The EBR–II demonstration project has shown that the electrometallurgical technique can be used to treat sodium-bonded spent nuclear fuel.'' The report further stated that ''the committee has found no significant technical barriers in the use of electrometallurgical technology to treat EBR–II spent fuel, and EMT therefore represents a potentially viable technology for DOE spent nuclear fuel treatment.''

VIII. Decision

DOE has decided to implement the preferred alternative as stated in the final EIS. That is, DOE will electrometallurgically treat the EBR–II spent nuclear fuel (about 25 metric tons of heavy metal) and miscellaneous small lots of sodium-bonded spent nuclear fuel. The fuel will be treated at ANL-W. In addition, Fermi-1 sodium-bonded spent nuclear fuel (about 35 metric tons of heavy metal) will be stored while alternative treatments are evaluated further. Should no alternative prove more cost-effective for this spent nuclear fuel, electrometallurgical treatment of the Fermi-1 spent nuclear fuel remains a key option.

DOE will validate the cost of using alternative treatment techniques (*e.g.,* sodium removal and placement in high-integrity cans) for the Fermi-1 blanket spent nuclear fuel. These techniques may be economically favorable for the Fermi-1 blanket spent nuclear fuel because of characteristics that distinguish it from the EBR–II spent nuclear fuel. The most significant distinguishing characteristic is that the Fermi-1 blanket spent nuclear fuel does not require the extensive safeguards and security measures that are required for the EBR–II blanket fuel. The difference in security requirements for these two types of fuel is a result of the difference in plutonium content; the EBR–II blanket fuel has 30 times more plutonium at a greater concentration than the Fermi-1 blanket fuel. DOE will proceed with the electrometallurgical treatment of the EBR–II spent nuclear fuel and monitor the results and costs while continuing the evaluation of sodium removal techniques for the Fermi-1 blanket spent nuclear fuel. While EBR–II spent nuclear fuel is undergoing electrometallurgical treatment and the Fermi-1 blanket spent nuclear fuel remains in storage, DOE has approximately four years in which to evaluate the operating experience of electrometallurgical treatment technology and further evaluate other alternatives for the Fermi-1 blanket spent nuclear fuel. After these data are evaluated, DOE will decide whether to treat the Fermi-1 blanket spent nuclear fuel using electrometallurgical treatment or to use another treatment method and/or disposal technique.

For several years, DOE has been actively developing electrometallurgical treatment technology specifically for the management of sodium-bonded spent nuclear fuel. Having completed a successful demonstration of electrometallurgical treatment, DOE believes that this technology has the highest probability of meeting the objective of reducing the uncertainties associated with qualifying the sodium-bonded spent nuclear fuel for disposal in a geologic repository. Electrometallurgical technology will convert the reactive fuel into ceramic and metallic waste forms, both of which are more stable than untreated sodium-bonded spent nuclear fuel. In addition, uranium would be separated from the spent nuclear fuel, blended with depleted uranium if needed to reduce the enrichment levels, and cast into ingots to be stored until a disposition decision is made through a separate NEPA review. Most of the plutonium will be disposed of in the ceramic waste form, with the remaining small fraction disposed of in the metallic waste form. Currently, the only waste form that has been tested and analyzed extensively under geologic repository conditions and may be accepted for repository disposal is borosilicate glass. Tests have shown that the ceramic and metallic waste forms from electrometallurgical treatment may perform as well as the standard borosilicate glass waste form. The ceramic and metallic waste forms would require less storage volume than untreated spent nuclear fuel.

IX. Mitigation

The strictly controlled conduct of operations associated with DOE's spent nuclear fuel management activities are integral to the selected alternative. DOE has directives and regulations for safe conduct of spent nuclear fuel treatment and management operations. DOE has adopted stringent controls for minimizing occupational and public radiation exposure. The policy is to reduce radiation exposures to as low as reasonably achievable. Singly and collectively, these measures avoid, reduce, or eliminate any potentially adverse environmental impacts from spent nuclear fuel treatment and management. DOE has not identified a need for additional mitigation measures.

Issued in Washington, DC, this 11th day of September 2000.

William D. Magwood IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 00–24005 Filed 9–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces the third in a series of meetings of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—Panel on Emerging Technological Alternatives to Incineration.

DATES: September 27, 2000, 8 am—2:30 pm

ADDRESSES: U.S. Department of Energy, Program Review Center, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585. Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Francesca McCann, Staff Director, Office of the Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on emerging technological alternatives to incineration for the treatment of mixed waste which the Department of Energy should pursue. The Panel will focus on the evaluation of emerging non-incineration technologies for the treatment of low-level, alpha low-level and transuranic wastes containing polychlorinated biphenyls (PCBs) and other hazardous constituents. Waste categories to be addressed include inorganic homogeneous solids, organic homogeneous solids, and soils. The Panel will also evaluate whether the emerging non-incineration technologies could be implemented in a manner that would allow the Department of Energy to comply with all legal requirements, including those contained in the Settlement Agreement and Consent Order signed by the State of Idaho, Department of Energy, and the U.S. Navy in October 1995.

Tentative Agenda

The agenda for the September 27 meeting has not been finalized. However, the meeting will include panel discussion and presentations on Waste Characterization and R&D Plans for Tru Mixed Waste. Members of the Public wishing to comment on issues before the Panel on Emerging Technological Alternatives to Incineration will have an opportunity to address the Panel during the scheduled public comment period. The final agenda will be available at the meeting.

Tentative Agenda

8:00–8:10 Opening Remarks
8:10–8:30 Review of Minutes from the Idaho Falls, Idaho and Jackson, Wyoming Meetings
8:30–9:00 INEEL Wastes to be Treated: Volumes vs Criteria
9:00–9:30 Characterization Video
9:30–9:45 Break
9:45–10:30 R&D Plan for TRU Mixed Waste
10:30–11:00 RFI Review and Technical Analysis Plan/Responses Received
11:00–12:00 Discussion of Report Outline and Writing Assignments
12:00–12:30 Lunch
12:30–01:00 Public Comment
1:00–2:00 Actions and Plans for future meetings
2:00–2:30 Specific Questions to be Answered by DOE/Closing

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Panel on Emerging Technological Alternatives to Incineration and submit written comments or comment during the scheduled public comment period. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on September 14, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–24053 Filed 9–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–109–000]

Alternate Power Source, Inc., Complainant v. ISO New England, Inc., Respondent; Notice of Complaint

September 13, 2000.

Take notice that on September 11, 2000, Alternate Power Source, Inc. (APS), tendered for filing a Complaint under Section 206 and 306 of the Federal Power Act in which APS petitions the Commission for an order directing ISO New England, Inc. (ISO–NE) to suspend the April, 2000 ICAP auction ''clearing price''; cease and desist from requiring APS to pay into escrow $700,000 for the month of April, 2000; cease and desist from ''settling'' the ICAP prices for the months of May, June and July, 2000, and from requiring any payments into escrow until a thorough investigation of all conduct and actions is completed; and if, after an investigation, there is a finding of anomalous conduct in the so-called ICAP auction ''market'' for the months April through July, 2000, direct ISO–NE to mitigate ICAP prices for those months.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 September 21, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before September 21, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23983 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–457–000]

Canadian-Montana Pipeline Corporation and 3698157 Canada Ltd; Notice of Application to Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

September 13, 2000.

On September 7, 2000, The Canadian-Montana Pipeline Corporation (CMPL) and 3698157 Canada Ltd. (Canada Ltd.) filed an application pursuant to Section 3 of the Natural Gas Act (NGA) and Section 153 of the Commission's Regulations and Executive Order No.

10485, as amended by Executive Order No. 12038, seeking authorization to transfer CMPL's existing NGA Section 3 authorization and Presidential Permit to Canada Ltd., all as more fully set forth in the application which is on file with the Commission and which is open to the public for inspection. This filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the applications should be directed to William A. Pascoe, Vice President of Gas Operations, 40 East Broadway, Butte, Montana 59701, (406) 497–4212.

Specifically, CMPL and Canada Ltd. request the Commission to issue an order: (1) transferring NGA Section 3 authorization to site, construct and operate facilities for the importation of natural gas from the Province of Saskatchewan, Canada, into Montana; and (2) authorizing the assignment of CMPL's June 18, 1999 Presidential Permit to construct, operate and maintain facilities at the Saskatchewan, Canada/Montana import point.

The import facilities consist of (1) a gas meter station in LSD 5–4–1–14 W3M adjacent to Highway 4 approximately 0.5 mile north of the Village of Monchy, Saskatchewan; and (2) a 219.1 mm O.D. pipeline located directly south of this meter station across the Canada-United States border at Section 6 T37N R30E, extending a distance of approximately 2438 feet. The pipeline crosses the International Boundary and interconnects with a gathering line owned by North American Resources Company in Montana at the property line of the Montana landowner.

CMPL and Canada Ltd. states that the requested transfer and assignment would facilitate the sale of facilities pursuant to a June 28, 2000 Agreement of Purchase and Sale and the transfer and assignment would not affect the underlying use of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 4, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CMPL and Canada Ltd. to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23978 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–284–000]

Koch Gateway Pipeline Company; Amended Notice of Site Visit

September 13, 2000.

The route review originally scheduled for September 19 and 20, 2000, has been rescheduled for September 20 and 21, 2000. The staff of the Office of Energy Projects (OEP) will conduct the route review of the existing Index 1 Pipeline and related laterals proposed for abandonment by Koch Gateway Pipeline Company (Koch). These facilities were the subject of an Environmental Assessment prepared by the OEP staff and issued for public review and comment on January 27, 2000. The routes, located in the Dallas-Fort Worth area of Texas, will be inspected by automobile. Representatives of Koch will accompany the OEP staff.

Anyone interested in attending the route review or obtaining further information may contact Mr. Paul McKee of the Commission's External Affairs Office at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23981 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–456–000]

The Montana Power Company and 3698157 Canada Ltd.; Notice of Application To Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

September 13, 2000.

On September 7, 2000, The Montana Power Company (MPC) and 3698157 Canada Ltd. (Canada Ltd.) filed an application pursuant to Section 3 of the Natural Gas Act (NGA) and Section 153 of the Commission's Regulations and Executive Order No. 10485, as amended

by Executive Order No. 12038, seeking authorization to transfer MPC's existing NGA Section 3 authorization and Presidential Permit to Canada Ltd., all as more fully set forth in the application which is on file with the commission and which is open to the public for inspection. This filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the applications should be directed to William A. Pascoe, Vice President of Gas Operations, 40 East Broadway, Butte, Montana, 59701, (406) 497–4212.

Specifically, MPC and Canada Ltd. request the Commission to issue an order: (1) transferring NGA Section 3 authorization to site, construct and operate facilities at Reagan, Alberta and Del Bonita, Montana for the importation of natural gas into the United States; and (2) authorizing the assignment of MPC's November 20, 1981 Presidential Permit to construct, operate and maintain facilities at the Reagan/Del Bonita import point.

The import facilities consist of a section of 4½-inch pipe extending from the interconnection with the Canadian-Montana Pipe Line Company system on the Northern side of the international boundary between the United States and Canada and includes approximately 1 mile of pipe extending in a southerly direction to a point of interconnection with The Montana Power Gas Company gathering facilities in Glacier County, Montana.

MPC and Canada Ltd. states that the requested transfer and assignment would facilitate the sale of facilities pursuant to a June 28, 2000 Agreement of Purchase and Sale and the transfer and assignment would not affect the underlying use of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 4, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MPC and Canada Ltd. to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23977 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3591–000 and ER00–3591–001]

New York Independent System Operator, Inc., Notice of Filing and Extension of Time

September 13, 2000.

Take notice that on September 8, 2000, the New York Independent System Operator, Inc. (NYISO), filed a motion requesting leave to submit revised tariff sheets out of time and a corrected combined compliance filing and report in the above-captioned proceedings. The original combined compliance filing and report was filed on September 1, 2000. The corrected combined filing proposes that the requested tariff changes become effective on November 1, 2000, with the single exception of a provision governing the payment of lost opportunity costs to suppliers of 10-Minute reserves, which the filing proposes be made retroactively effective on May 31, 2000.

A copy of this filing was served upon all parties in the above-captioned proceeding.

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, 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 and protests should be filed on or before September 27, 2000. 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 also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

This notice also extends the time for filing motions and protests in response to the September 1, 2000 filing by NYISO and noticed on September 7, 2000 in Docket No. ER00–3591–000, from September 22, 2000 to September 27, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23975 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2585–000]

Northbrook Carolina Hydro, LLC; Notice of Authorization for Continued Project Operation

September 13, 2000.

On January 4, 1999, Northbrook Carolina Hydro, LLC, licensee for the Idols Project No. 2585, filed an application for surrender of license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2585 is located on the Yadkin River in Forsyth and Davie Counties, North Carolina.

The license for Project No. 2585 was issued for a period ending July 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2585 is issued for a period effective August 1, 2000, through July 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Northbrook Carolina Hydro, LLC is authorized to continue operation of the Idols Project No. 2585 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23980 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11685–001 Ohio]

The Stockport Mill Country Inn; Notice of Availability of Environmental Assessment

September 13, 2000.

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for an original license for the proposed Stockport Mill Country Inn Water Power Project, located on the Muskingum River, near the town of Stockport, Morgan County, Ohio, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protection measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Stockport Mill Country Inn Project No. 11685'' to all comments. For further information, contact Tom Dean at (202) 219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23982 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–404–000

Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Columbia Liberty Project, Request for Comments on Environmental Issues, and Notice of Site Visit

September 13, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Columbia Liberty Project involving construction and operation of facilities by Texas Eastern Transmission Corporation (Texas Eastern) in Chester and Delaware Counties, Pennsylvania.[1] Texas Eastern proposes to expand its existing Philadelphia Lateral System to supply 84,000 dekatherms per day of natural gas to the Columbia Liberty Plant, a 567.7 megawatt gas-fired electric power plant presently being constructed in the Borough of Eddysburg in Delaware County, Pennsylvania.

If you are a landowner on Texas Eastern's existing or proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by FERC entitled ''An Interstate Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Texas Eastern provided to landowners. This

[1] Texas Eastern's application was filed with the Commission on July 13, 2000, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

fact sheet addresses a number of typically asked questions, including the use of eminent domain. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners along Texas Eastern's existing and proposed routes; Federal, state, and local government agencies; elected officials; regional environmental, and public interest groups Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's service list and parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Texas Eastern's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

Texas Eastern proposed to install one 4,000 horsepower electric compressor at its existing Eagle Compressor Station; to replace various segments of its existing 20-inch-diameter Line No. 1–A; and to construction about 0.6 mile of 12-inch-diameter pipeline and associated metering facilities to connect with the Columbia Liberty Plant. To supply the required volumes to the power plant Texas Eastern proposes to increase the operating pressure of Line No. 1–A from 400 pounds per square inch gauge (psig) to 656 psig.

The general location of Texas Eastern's proposed facilities is shown on the map attached as appendix 1.[2]

Land Requirements for Construction

Construction of the Texas Eastern's proposed facilities would affect about 39.3 acres of land. Texas Eastern proposes to use 10.4 acres for construction of the new Liberty Lateral and 28.9 acres for replacing segments on Line 1–A. Following construction, about 3.5 acres would be retained as new permanent right-of-way for the new pipeline facilities. The remaining 35.8 acres of temporary work space would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be alloted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- Biological Resources—Impacts on the bog turtle, a Federally listed endangered species.
- Land Use—Impacts to residents within 50 feet of construction.
- Noise—Affects from the addition of a 4,000 horsepower compressor unit.

Public Participation and Site Visit

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 1, PJ–11.1;
- Reference Docket No. CP00–404–000; and
- Mail your comments so that they will be received in Washington, DC on or before October 13, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you may be removed from the environmental mailing list.]

On September 29, 2000, the Office of Energy Projects staff will conduct a precertification site visit of the project route and possible reroutes. All parties may attend. Those planning to attend must provide their own transportation. We will be meeting in the parking lot at the Ramada Inn in Essington at 8:30 am.

For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''Us,'' ''we,'' and ''our'' refer to the environment staff of the FERC's Office of Pipeline Regulation.

file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23976 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

September 13, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection.

(a) *Type of Application:* Amendment of license for the non-project use of project lands and waters: the construction and operation of a water intake and a portion of planned raw water pumping facilities on 0.2 acres of project lands, and the withdrawal of up to 28 million gallons per day (GPD) from Blewett Falls Lake.

b. *Project No:* 2206–014.

c. *Date Filed:* August 31, 2000.

d. *Applicant:* Carolina Power and Light Company.

e. *Name of Project:* Yadkin-Pee Dee River Project.

f. *Location:* Near Blewett Dam in Richmond County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry Mann, Carolina Power and Light Company, PO Box 1551, 411 Fayetteville Street Mall, Raleigh, NC 27602, (919) 546–6889.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–2206–014) on any comments or motions filed.

k. *Description of Project:* Carolina Power and Light Company (applicant) requests Commission authorization to grant an easement to Richmond County, North Carolina, for (1) the construction and operation of a water intake and a portion of planned raw water pumping facilities on 0.212 acres of project lands; and (2) the withdrawal of up to 28 million gallons per day (MGD) from Blewett Falls Lake for municipal water supply.

l. *Locations of the application:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h, above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for this notice.

o. *Filing and Service of Responsive Documents*—Any filing must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the subject application, No. 2206–014. A copy of any motion to intervene must also be served upon Applicant's representative specified in item h, above.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23979 Filed 9–18–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6871–7]

Draft Guidance Document for Nutrient Trading in the Chesapeake Bay

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Chesapeake Bay Program has developed a Draft Guidance Document for Nutrient Trading in the Chesapeake Bay. The document presents fundamental principles and guidelines for nutrient trading in the Chesapeake Bay watershed. This document is available to the public for review from September 8, 2000 through October 27, 2000.

The document is available starting September 8, 2000 at the following web-site: *http://www.chesapeakbay.net/trading.html.* You may request a paper copy by calling Julie Trask at 410–267–5753 or by e-mail at *trask.julie@epa.gov.* All comments must be sent to the appropriate state contact listed below by Oct. 27, 2000:

DC: Ann Goode, DC Dept. Health, 202–535–2965, *anngoode@hotmail.com*

PA: Stuart Gansell, PA Dept. Environmental Protection, 717–783–7420, *morris.silver@dep.state.pa.us*

MD: John Rhoderick, MD Dept. of Agriculture, 410–841–5876, *rhoderjc@mda.state.md.us*

VA: John Kennedy, VA Department of Environmental Quality, 804–698–4312, *jmkennedy@deq.state.va.us*

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 00–24044 Filed 9–18–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6872–6]

ILCO Superfund Site; Notice of Proposed Settlements

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlements.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with nine proposed settlors for response costs pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Interstate Lead Company Site (ILCO) located in Leeds, Jefferson County, Alabama. The proposed settlors are: (1) Beebe Batteries, Inc.; (2) Courtesy Metal Company, Inc.; (3) E&J Metal Co.; (4) Hawker Powersource, Inc., f/k/a KW Powersource; (5) Mason City Iron & Metal Co.; (6) Midwest Iron and Metal Company, Inc.; (7) MIP, Inc.; (8) Hurwich Iron Company, Inc., f/k/a South Bend Baling and Iron Co., Inc. and (9) National Compressed Steel Corporation. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), 61 Forsyth Street SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 6, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division

[FR Doc. 00–24046 Filed 9–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6872–7]

Proposed CERCLA Prospective Purchaser Agreement; Master Metals, Inc., Superfund Site; City of Cleveland, Cuyahoga County, OH

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning a portion of the Master Metals, Inc., Superfund site at 2850 W. Third Street, Cleveland, Cuyahoga County, Ohio, 44113, with the Midwest Railway Preservation Society, Inc. (MRPS). The agreement covers approximately .4 acres of the approximately 4.3 acre site. The agreement requires MRPS to pay $2,000 to the Hazardous Substance Superfund; to grant future access rights; and to record appropriate deed notices. The agreement includes a covenant not to sue MRPS under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) and contribution protection for MRPS under section 113(f)(2), 42 U.S.C. 9613(f)(2). For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the agreement. The United States will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Gwen Massenburg, Remedial Project Manager, at (312) 886–0983 to make arrangements to inspect the comments.

DATES: Comments must be submitted on or before September 19, 2000.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Kris Vezner, Assistant Regional Counsel, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–6827. Comments should reference the ''Master Metals, Inc., Superfund Site—Cleveland—prospective purchaser agreement,'' and should be addressed to Mr. Vezner.

FOR FURTHER INFORMATION CONTACT: Kris Vezner, Assistant Regional Counsel, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–6827.

Dated: September 6, 2000.

William E. Muno,

Director, Superfund Division, U.S. EPA Region 5.

[FR Doc. 00–24045 Filed 9–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6871–9]

Application From the States of Utah and Arizona for the Prohibition of the Discharge of Vessel Sewage Into Lake Powell; Notice of Determination

This notice is to announce that discharging sewage, whether treated or not, from vessels into Lake Powell is now prohibited.

Lake Powell is a reservoir on the Colorado River and is impounded by the Glen Canyon Dam at Page, Arizona. Approximately 95 percent of Lake Powell is located in Utah and 5 percent is in Arizona. The States of Utah and Arizona have jointly petitioned the Regional Administrators from Regions 8 and 9 of the United States Environmental Protection Agency (EPA) to prohibit the discharge of sewage from all vessels into Lake Powell. Under section 312(f)(3) of the Clean Water Act, 33 U.S.C. 1322(f)(3), any state may make a prohibition of this type. However, no such prohibition is to apply until the EPA has determined that adequate facilities are reasonably available for the safe and sanitary removal and treatment of sewage from all vessels on the water to be covered by the prohibition.

On May 22, 2000, the EPA published a notice in the **Federal Register** describing the States' application. (See 65 FR 32093.) In the notice, the EPA announced that it proposed to make an affirmative determination that adequate facilities exist. The EPA also asked for comments on the States' application. The 45-day public comment period ended on July 6, 2000, and the EPA received no comments.

Today the EPA is finalizing its determination that adequate facilities are reasonably available for the safe and

sanitary removal and treatment of sewage from all vessels on Lake Powell. With this determination, the States' prohibition against discharging any sewage, whether treated or not, from any vessel into Lake Powell is now in effect.

According to the States' application, jurisdictional and enforcement authority for this prohibition will reside with the respective States and the National Park Service. The Utah Department of Environmental Quality, the Utah Department of Natural Resources, the Arizona Department of Environmental Quality, the Arizona Department of Fish and Game, the United States Coast Guard and the National Park Service, and Glen Canyon National Recreation Area, will all be the enforcing agents supporting the prohibition. The Navajo Nation bounds on the southeast portion of Lake Powell, but the jurisdiction of the Navajo Nation is not affected by the application of Utah and Arizona.

The States' application certifies that there are six authorized vessel entry/take-out points on the Lake: Wahweap, Stateline, Hite, Bullfrog, Hall's Crossing, and Antelope Point. The first five locations have major pumpout facilities. Due to the geomorphology of the Lake, it is nearly impossible to remove or launch a vessel from any other point on the Lake. A major water accessible vessel pumpout facility is also located at Dangling Rope. Each major facility has multiple pumps. In addition, eight supplemental mechanically operated floating pump out facilities are located at various areas on the Lake. These pumps are: Warm Creek Bay, located in Warm Creek Bay; Dominiquez Butte, near Lake Powell Channel Mile Marker 22; Rock Creek, near Lake Powell Channel Mile Marker 35; Oak Bay, located near Lake Powell Channel Mile Marker 51; Escalante, located near Lake Powell Channel Mile Marker 68A; Rincon, near Lake Powell Channel Mile Marker 77A; Hall's Creek Bay, located in Hall's Creek Bay on the Eastside; and Forgotten Canyon, near Lake Powell Channel Mile Marker 106. There is a total of sixty-nine pumpouts on the Lake. All the facilities identified above are operational 24 hours per day. None of the facilities identified will exclude any vessel because of insufficient water depth adjacent to the facility. There are no fees to pump out at any facility. Treatment of all wastes from the pumpout facilities is to be in conformance with Federal law. This prohibition action is, therefore, intended to prevent discharge of human wastes to the waters of the Lake to protect public health and the water quality of this important national resource.

For information, contact Douglas Johnson (8EPR–EP), U.S. Environmental Protection Agency, Region 8, 999 18th Street (Suite 300), Denver, Colorado, 80202–2466. He can also be reached at (303) 312–6834.

Dated: September 1, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, EPA Region 8.

Dated: August 30, 2000.

Laura Yoshii,

Deputy Regional Administrator, EPA Region 9.

[FR Doc. 00–24049 Filed 9–18–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 8, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0624.

Title: Amendment of the Commission's Rules to Establish New Personal Communications Services—Section 24.103(f).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 1,782.

Estimated Time Per Response: 15.1 hrs. (avg.).

Frequency of Response: 1, 5, or 10 yrs.

Total Annual Burden: 26,843 hrs.

Total Annual Cost: $0.

Needs and Uses: 47 CFR 24.103(f) requires narrowband PCS licensees to notify the Commission at specific benchmarks that systems are in compliance with construction requirements. Requirements were adopted to ensure that licensees quickly construct their systems and that the systems serve significant areas.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–23954 Filed 9–18–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 12, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0921.
Expiration Date: 08/31/2003.
Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 20 respondents; 8 hours per response (avg.).; 160 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced services on a reasonable and timely basis are requested to include information in accordance with specified criteria outlined in CC Docket No. 98–147, released 2/11/2000 (FCC No. 00–26). In order to review requests for LATA modifications promptly and efficiently, it is necessary that BOCs provide the information specified. The criteria set forth in the order will serve to ease the petition process on BOCs by providing guidelines that will serve to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition review process by ensuring that petitioners will provide all of the information the Commission needs to properly review the requests. *Obligation to respond:* Required to obtain or retain benefits.

OMB Control No.: 3060–0613.
Expiration Date: August 31, 2003.
Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Transport Phase II (Third R&O).
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 64 respondents; 13 hours per response (avg.).; 832 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: Tier 1 local exchange carriers (except NECA members) are required to make tariff filings to provide certain signalling information to interested parties so that those parties can provide tandem switching services. Tandem switching providers are required to provide certain billing information to those Tier 1 local exchange carriers. The tariffs and cost support information accompanying them are used by the FCC staff to ensure that the tariff rates are paid for, signalling information are just, reasonable, and nondiscriminatory, as sections 201 and 202 of the Communications Act of 1934, as amended, require. Without this information, the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. Tariffs are used by parties using signalling information to ascertain the charges and other terms and conditions applicable to these offerings. Signalling information is necessary so that parties can provide tandem switching services. *Obligation to respond:* Mandatory.

OMB Control No.: 3060–0742.
Expiration Date: 09/30/2003.
Title: Telephone Number Portability (47 CFR Part 52, Subpart C, Sections 52.21–52.33).
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 1685 respondents; 5.48 hours per response (avg.).; 9239 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: 47 CFR Part 52, Subpart C implements the statutory requirement that local exchange carriers (LECs) provide number portability as set forth in Section 251 of the Telecommunications Act of 1996 (1996 Act). The Commission requires the following information:

a. *Requests for long-term number portability in areas inside or outside the 100 largest MSAs:* Long-term number portability must be provided by LECs and CMRS providers inside the 100 largest Metropolitan Statistical Areas (MSAs) in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule. After the deadline for deployment in an MSA, carriers must deploy number portability in additional switches in that MSA upon request within certain time frames. After December 31, 1998, for LECs and after November 24, 2002, for CMRS providers outside the 100 largest MSAs, the *First Report and Order* continues to require deployment within six months after a specific request by another telecommunications carrier. The request must specifically request long-term number portability, identify the area covered by the request, and provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers. See 47 CFR Sections 52.23(b) and 52.31(a). In a Memorandum Opinion and Order, in CC Docket No. 95–116, the Commission extended the deadline for CMRS providers to support service provider LNP in the top 100 MSAs until November 24, 2002. (Number of respondents: 210; hours per response: 3 hours; total annual burden: 630 hours).

b. *Petitions to extend implementation deadline:* Carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed. See 47 CFR Sections 52.23(3) and 52.31(d). (No. of respondents: 8; hours per response: 10 hours; total annual burden: 80 hours).

c. *Tariffs and Cost Support:* Incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission for a monthly number portability charge. See 47 CFR 52.33. Incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order. For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term number portability. (No. of respondents: 67; hours per response: 85.5 hours; total annual hours: 5728.5 hours).

d. *Recordkeeping Requirement:* Telecommunications carriers are required to provide information about their international and regional end-user telecommunications revenues that will enable the regional database administrator to allocate the costs of the number portability regional databases in a competitively neutral manner. See 47 CFR Sections 52.32 and 52.33. Incumbent LECs are also required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. See the Third Report and Order, CC Docket No. 95–116, released May 12, 1998. (No. of respondents: 1400; hours per response: 2 hours; total annual hour: 2800 hours).

The information collected and required by the Commission will be used to implement Section 251 of the Communications Act of 1934, as amended. *Obligation to respond:* Required to obtain or retain benefits.

OMB Control No.: 3060–0775.

Expiration Date: 09/30/2003.

Title: Separate Affiliate Requirement for Independent Local Exchange Carrier (LEC) Provision of International, Interexchange services (47 CFR Sections 64.1901–64.1903).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 10 respondents; 6056.3 hours per response (avg.).; 60,563 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $1,003,000.

Frequency of Response: Recordkeeping.

Description: In CC Dockets No. 96–149 and 96–61, the Commission imposed recordkeeping requirements on independent LECs. Independent LECs wishing to offer international, interexchange services must comply with the separate affiliate requirements of the Competitive Carrier Fifth Report and Order in order to do so. One of these requirements is that the independent LEC's international, interexchange affiliate must maintain books of account separate from such LECs' local exchange and other activities. This regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, it refers to the fact that as a separate legal entity, the international, interexchange affiliate must maintain its own books of account in the ordinary course of its business. This recordkeeping requirement is used by the Commission to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations. *Obligation to respond: Mandatory.*

OMB Control No.: 3060–0710.

Expiration Date: August 31, 2003.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996—CC Docket 96–98.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 12,250 respondents; 124.86 hours per response (avg.).; 1,529,620 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Description: The Commission adopted rules and regulations to implement parts of 47 USC sections 251 and 252 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost-based and just and reasonable and provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

a. *Submission of Information Necessary to Reach Agreement.* Parties negotiating agreements under section 252 are required to provide each other with information necessary to reach agreement. 47 USC 252(b). See also 47 CFR Sections 51.301, 51.100. (No. of respondents: 51; hours per response: 500 hours; total annual burden: 25,500 hours).

b. *Submission of Agreements to the State Commission.* Carriers must file interconnection agreements negotiated or arbitrated under the 1996 Act with the appropriate state commissions. Carriers must also file their existing interconnection agreements, including those with neighboring local exchange carriers (LECs), with the appropriate state commissions, according to schedules imposed by state commissions. Agreements between Class A carriers must be submitted to the state commission no later than June 30, 1997 or such earlier date as a state commission may require. Once agreements are approved by the state commission, incumbent LECs are also required to make provisions of their approved agreements available to all parties. 47 USC 252(e)(1), 252(i). See also 47 CFR Sections 51.100, 51.3, 51.303. (No. of respondents: 551; hours per response: 1.5 hours (avg.).; total annual burden: 835 hours).

c. *Burden of Proof Regarding Interconnection and Access to Unbundled Network Elements.* An incumbent LEC may be required to provide information to state commissions to prove that a particular interconnection or access point to unbundled network elements is not technically feasible. An incumbent LEC that denies a request to combine network elements must prove by clear and convincing evidence that the requested combination is not technically feasible or that the requested combination would impair the ability of other carriers to interconnect or to access unbundled network elements. 47 USC 251(c)(2), (c)(3). See also CFR Sections 51.305, 51.323. (No. of respondents: 100; hours per response: 250 hours; total annual burden: 25,000 hours).

d. *Collocation.* When an incumbent LEC alleges that there are space constraints, it must provide the state commission with detailed floor plans or diagrams of those premises. When an incumbent LEC objects to collocation of equipment by a telecommunications carrier, the incumbent LEC bears the burden of demonstrating to the state commission that the equipment will not be actually used for the purpose of obtaining interconnection or gaining access to unbundled network elements. An incumbent LEC providing collocation must permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission. 47 USC 251(c)(6). See also 47 CFR Sections 51.321, 51.323. (No. of respondents: 100; hours per response: 25 hours; total annual burden: 25,000 hours).

e. *Notification that a State Commission Has Failed to Act.* Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) file with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission; and (3) within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. 47 USC 252(e). See also 47 CFR Section 51.803. (No. of respondents: 30; hours per response: 1 hour; total annual burden: 30 hours).

f. *Rural and Small Carriers.* Rural and small carriers may have to submit information to state commissions in order to (1) justify a continued exemption under section 251(f)(1) once a bona fide request has been made; and (2) petition a state commission for a suspension or modification of the Act's requirements under section 251(f)(2). 47 USC 251(f). See also 47 CFR Section 51.403. (No. of respondents: 500 hours; hours per response: 10 hours; total annual burden: 5000 hours).

g. *Pole Attachment Modifications.* Absent a private agreement establishing notification procedures, utilities must provide no less than 60 days' written notification of a modification of a pole attachment to parties holding attachments on the facility to be modified. Notice should be sufficiently specific to apprise the recipient of the nature and scope of the planned

modification. If the contemplated modification involves an emergency situation for which advanced written notice would prove impractical, the notice requirement does not apply, except that notice should be given as soon as reasonably practicable, which in some cases may be after the modification is completed. This requirement does not apply to routine pole maintenance activities. Utilities and parties with attachments should exchange maintenance handbooks or other written descriptions of their standard maintenance practices. Changes to these practices should be made only upon 60 days' written notice. 47 USC § 224(h). See also 47 CFR Section 1.1403. (No. of respondents: 12,250; hours per response: .50 hours; total annual burden: 531,125 hours).

h. *Pole Attachment Access Requests and Denials of Access.* The Commission adopts procedures to provide a complete record of pole access requests and denials of requests. Therefore, cable operators and telecommunications carriers must provide written requests for access to utilities. If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45th day. The denial must be specific, and the utility must include all relevant evidence supporting its denial. It must enumerate how the evidence relates to one of the reasons that access can be denied under Section 224(f)(2), *i.e.*, lack of capacity, safety, reliability or engineering standards. 47 USC 224(f), 251(b)(4). See also CFR Section 1.1403. (No. of respondents: 2750; hours per response: 1.18 hours (avg.).; total annual burden: 3250 hours).

i. *Dispute Resolution Process for Denials of Access.* Upon the receipt of a notice of denial from the utility, the requesting party shall have 60 days to file its complaint with the Commission. We anticipate that by following the required procedure for denials of access, the Commission will, upon receipt of a complaint, have all relevant information upon which to make its decision. The petition must be served pursuant to Section 1.1404(b) of the Commission's rules. 47 USC 224(f), 251(b)(4). See also CFR Sections 1.1403, 1.1404. (No. of respondents: 500; hours per response: 14.5 hours; total annual burden: 7250 hours).

j. *Preparation of Forward-Looking Economic Cost Studies to Determine Rates for Interconnection and Unbundled Network Elements during Arbitration Proceedings.* States may prepare themselves, or require parties to prepare, forward-looking economic cost studies to determine rates for unbundled elements during arbitration proceedings. 47 U.S.C. 251(c)(2), (c)(3), (c)(6), 252(d)(1). See also 47 CFR Section 51.505. (No. of respondents: 100; hours per response: 1216 hours; total annual burden: 121,600 hours).

k. *Preparation of a Cost Study on Avoidable Costs to Determine Resale Discounts.* States may prepare themselves, or require parties to prepare, avoided cost studies to determine resale discounts. Initially, a state may choose a percentage within the Commission's default discount percentage range, or set a discount through review of an avoided cost study prepared by a state or a party. A state that chooses to employ the Commission's default discount percentage range must articulate a reason for its choice, and must set a resale discount through review of an avoided cost study within a reasonable time after choosing the default percentage. 47 U.S.C. 251(c)(4), 252(d)(3). See also 47 CFR Sections 51.609, 51.611. (No. of respondents: 200; hours per response: 480 hours; total annual burden: 96,000 hours).

l. *Preparation of Forward-Looking Economic Cost Studies Conducted to Determine Reciprocal Rates for Transport and Termination of Telecommunications Traffic.* Parties may prepare forward-looking economic cost studies to demonstrate their costs incurred for the transport and termination of telecommunications traffic. 47 U.S.C. 251(b)(5), 252(d)(2). See also 47 CFR Sections 51.505, 51.511, 51.705. (No. of respondents: 100; hours per response: 1216 hours; total annual burden: 121,600 hours).

m. *Measurement of Traffic for Purposes of Determining Whether Transport and Termination Traffic Flows are Symmetrical.* Parties will measure traffic flow to determine their reciprocal compensation payment obligations. Those parties regulated under a bill-and-keep arrangement may wish to measure relative traffic flow to determine whether it is roughly balanced. 47 U.S.C. 251(b)(5), 252(d)(2). See also 47 CFR Sections 51.713, 51.703, 51.705. (No. of respondents: 550; hours per response: 700 hours; total annual burden: 385,000 hours).

n. *Filing Required for Arbitration.* Parties must provide documentation to states (or the Commission acting under 252(e)(5)) when arbitration is to occur. This information will consist of a statement of unresolved issues and the positions of the parties with respect to those issues, and a list of other issues discussed and resolved by the parties. 47 U.S.C. 252(b)(2).

See also 47 CFR Section 51.807. (No. of respondents: 200; hours per respondent: 2 hours; total burden: 400 hours).

o. *Determination of Rates for Interconnection, Unbundled Network Elements, and Transport and Termination of Telecommunications Traffic—State Commission Review of Forward-Looking Economic Cost Studies.* The statute provides that during an arbitration the state commission shall set prices for interconnection, unbundled network elements, and transport and termination of telecommunications traffic. The state commission sets such prices either through review of a forward-looking economic cost study, or by choosing one of the Commission's proxies. 47 U.S.C. 251(b), (c)(2), (c)(3), (c)(6), 252(d)(1). See also 47 CFR Section 51.507, 51.503, 51.505. (No. of respondents: 50; hours per response: 2160 hours; total annual burden: 108,000 hours).

p. *Determination of Resale Discount Percentage—State Commission Review of Avoided Cost Studies.* The statute provides that during an arbitration, the state commission shall set the percentage discount for resale of telecommunications services. Initially, a state may choose a discount percentage within the Commission's default discount percentage range, or set a discount through review of an avoided cost study prepared by a state or a party. A state that chooses to employ the Commission's default discount percentage range must set a resale discount through review of an avoided cost study within a reasonable time after choosing the default percentage. 47 U.S.C. 251(c)(4), 252(d)(3). See also 47 CFR Section 51.611. (No. of respondents: 50; hours per response: 640 hours; total annual burden: 32,000 hours).

q. *Petition for Incumbent LEC Status.* A state commission, or any other interested party, may request that the Commission issue an order declaring that a particular LEC be treated as an incumbent LEC, or that a class or category of LECs be treated as incumbent LECs. 47 U.S.C. 251(h)(2). (No. of respondents: 30; hours per response: 1 hour; total annual burden: 30 hours).

r. *Use of Proxies by State Commissions—Articulating Written Reasons for Choice.* State commissions may set rates for interconnection, unbundled network elements, transport and termination of telecommunications traffic, and resale utilizing a proxy or default percentage as an alternative to conducting or reviewing a cost study. In the First Order on Reconsideration, the Commission created a proxy to assist

state commissions in setting rates for the flat-rated component of the local switching network element. If a state commission chooses this option, it must articulate written reasons for its choice. 47 USC 251(b)(5), (c)(2), (c)(3), (c)(4), (c)(6), 252(d)(1), (d)(2), (d)(3). See also 47 CFR Sections 51.503, 51.505. (No. of respondents: 50; hours per response: 120 hours; total annual burden: 6000 hours).

s. *Preparation of Forward-looking Economic Cost Studies to Establish Rates for Transport and Termination for Paging and Radiotelephone Service, Narrowband Personal Communications Services, and Paging Operations in the Private Land Mobile Radio Services.* A state commission shall establish the rates that licensees in the Paging and Radiotelephone Service, Narrowband Personal Communications Services, and Paging Operations in the Private Land Mobile Radio Services may charge to other carriers for transport and termination of traffic, to the extent these carriers are unable to reach agreement on transport and termination rates in their interconnection agreements. Such rates must be based on forward-looking economic costs, and may not be set utilizing a proxy. Given the lack of information in the record concerning paging providers' costs, the Commission was unable to set a proxy for transport and termination rates for use by these carriers. 47 U.S.C. 251(b)(5). See also 47 CFR Sections 20.11, 51.505, 51.513. (No. of respondents: 50; hours per response: 720 hours; total annual burden: 36,000 hours). All of the requirements would be used to ensure that respondents comply with their obligations under the Telecommunications Act of 1996. *Obligation to respond:* Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–24027 Filed 9–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 12, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0743.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,342.

Estimate Time Per Response: 0.5 to 100 hours.

Frequency of Response: Recordkeeping; On occasion, quarterly, annual, and one-time reporting requirements; Third party disclosure.

Total Annual Burden: 131,077 hours.

Total Annual Costs: None.

Needs and Uses: The FCC's CC Doc. No. 96–128 promulgated rules and requirements implementing Section 276 of the Telecommunications Act of 1996. Among other things, the rules: (1) Establish fair compensation for every completed intrastate and interstate payphone call; (2) discontinue intrastate and interstate carrier access charge payphone service elements and payment, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphone in locations where payphones might not otherwise be located. Thus, the requirements in the Report and Order ensure that interexchange carriers, payphone service providers, LECs, and the states comply with their obligations under the Telecommunications Act of 1996, as amended.

OMB Control Number: 3060–0561.

Title: Section 76.913, Assumption of Jurisdiction by the Commission.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local, or Tribal Government.

Number of Respondents: 50.

Estimate Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 400 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.913 permits a local franchising authority (LFA) that is unable to meet certification standards to petition the Commission to regulate the basic service cable rates of its franchisee. The Commission uses the information collected under this requirement to identify situations where it should exercise jurisdiction over basic service and equipment rates in place of an LFA. Without this information, the basic cable rates of some franchising areas which are not subject to effective competition would remain unregulated in contravention of the goals of the 1992 Cable Act.

OMB Control Number: 3060–0565.

Title: Section 76.944, Commission Review of Franchising Authority Decisions on Rates for Basic Service and Associated Equipment

Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; State, Local, or Tribal Government.
Number of Respondents: 300.
Estimate Time Per Response: 1.0 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 300 hours.
Total Annual Costs: None.
Needs and Uses: The Commission uses the information in this collection to ensure that franchising authority decisions regarding cable rates are consistent with the provisions of the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's rules regarding cable rate regulation. The Commission's review of appeals is necessary to ensure uniformity of interpretation of Federal guidelines.

OMB Control Number: 3060–0607.
Title: Section 76.922, Rates for Basic Service Tiers and Cable Programming Tiers.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; and State, Local, or Tribal Government.
Number of Respondents: 4,475.
Estimate Time Per Response: 1 to 12 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 9,150 hours.
Total Annual Costs: None.
Needs and Uses: 47 CFR 76.922, in relevant part, provides that cable operators may adjust their permissible rates to reflect the rate they would be charging if they had been permitted to include increases in external costs occurring between September 30, 1992, and their initial date of regulation reduced by inflation increases already received with respect to those costs. This section also provides that qualified small systems using the streamlined rate reduction process must notify subscribers, the LFA, and the FCC, and it allows such small systems to increase rates to recover the costs of headend upgrades. The Commission uses the information in this collection to ensure that qualified small systems have additional incentives to add channels and that small systems are able to recover costs for headend upgrades when doing so.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–23953 Filed 9–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Items From the September 14th Open Meeting

September 14, 2000.

The following items have been deleted from the list of agendas items scheduled for consideration at the September 14, 2000, Open Meeting and previously listed in the Commission's Notice of September 7, 2000.

Item No.	Bureau	Subject
4	Cable Services	Title: Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices (CS Docket No. 97–80). Summary: The Commission will consider a Further Notice of Proposed Rule Making and Declaratory Ruling regarding the navigation devices rules.
5	Office of Plans and Policy	Title: Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00–67). Summary: The Commission will consider a Report and Order concerning compatibility between cable systems and consumer electronics equipment.
6	Wireless Telecommunications	Title: Promotion of Competitive Networks in Local Telecommunications Markets (WT Docket No. 99–217); Wireless Communications Association International, Inc., Petition for Rule Making to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); and Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to Telephone Network (CC Docket No. 88–57). Summary: The Commission will consider a First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 99–217, a Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and a Memorandum Opinion and Order in CC Docket No. 88–57), regarding obstacles to consumer's choice of telecommunications providers in multiple tenant environments.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–24074 Filed 9–14–00; 4:11 pm]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Partially Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of partially open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.
Dates of Meeting: October 5–7, 2000.
Place: Building J, Room 268, National Emergency Training Center, Emmitsburg, Maryland.
Time: October 5, 2000, 8:30 a.m.—9:30 a.m. (Open Meeting), October 5, 2000, 9:30 a.m.—12 noon (Closed Meeting), October 5, 2000, 12 noon—5 p.m. (Open Meeting), October 6, 2000, 8:30 a.m.—9 p.m. (Open Meeting), October 7, 2000, 8:30 a.m.—12 noon (Open Meeting).

Proposed Agenda: October 5, (Closed Meeting From 9:30 a.m.—12 noon, to review Fiscal Year 2001 budgetary and procurement recommendations.) October 5, 12 noon—5 p.m., Review National Fire Academy Program Activities. October 6–7, Finish review of National Fire Academy Program Activities and prepare Annual Report.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public (except as noted above) with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before September 29, 2000.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Chief Operating Officer, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: September 8, 2000.

Kenneth O. Burris, Jr.,

Chief Operating Officer.

[FR Doc. 00–24035 Filed 9–18–00; 8:45 am]

BILLING CODE 6718–01–P

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 October 4, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Glen Wallace Rogers,* Henderson, Texas; to retain voting shares of Rusk County Bancshares, Inc., Henderson, Texas, and thereby indirectly retain voting shares of Peoples State Bank, Henderson, Texas.

Board of Governors of the Federal Reserve System, September 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–24030 Filed 9–18–00; 8:45 am]

BILLING CODE 6210–01–P

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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 October 13, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. ANB Holdings, Inc., Oakland Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Oakland Park, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *Porter Bancorp, Inc.*, Shepherdsville, Kentucky; to acquire 100 percent of the voting shares of USAccess Holdings, Inc. (a proposed bank holding company), Louisville, Kentucky.

In connection with this application, *USAccess Holdings, Inc.*, Louisville, Kentucky; to become a bank holding company by acquiring at least 66 percent of the voting shares of USAccess Bank, Inc. (an existing subsidiary bank of Porter Bancorp), Louisville, Kentucky.

USAccess Bank, Inc. (an existing subsidiary bank of Porter Bancorp), Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Interim Henry County Bank, Inc. (an interim bank in organization), Pleasureville, Kentucky.

USAccess Holdings, Inc., Louisville, Kentucky; to acquire 100 percent of the voting shares of Interim Henry County Bank, Inc. (an interim bank in organization), Pleasureville, Kentucky.

Porter Bancorp, Inc., Shepherdsville, Kentucky; to acquire 100 percent of the voting shares of Interim Henry County Bank, Inc. (an interim bank in organization), Pleasureville, Kentucky.

Board of Governors of the Federal Reserve System, September 13, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–23969 Filed 9–18–00; 8:45 am]

BILLING CODE 6210–01–P

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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 October 4, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Dinsdale Brothers, Inc., Palmer, Nebraska; to acquire 12.78 percent of the voting shares of Pinnacle Bank—Wyoming, Torrington, Wyoming.

Board of Governors of the Federal Reserve System, September 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–24029 Filed 9–18–00; 8:45 am]

BILLING CODE 6210–01–P

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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 October 13, 2000.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *Allegiant Bancorp, Inc.*, St. Louis, Missouri; to acquire Equality Bancorp, Inc., St. Louis, Missouri, thereby indirectly acquiring its wholly owned thrift subsidiary, Equality Savings Bank, St. Louis, Missouri, and thereby engage in owning and operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than October 13, 2000.

B. **Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *BYL Bancorp*, Orange, California; to engage *de novo* through its subsidiary, CNL Commercial Finance, Inc., Mission Viejo, California, in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y, and activities related to the extension of credit, pursuant to § 225.28(b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, September 13, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–23968 Filed 9–18–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of an Optional Form by Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low usage:

OF 167, Evidence Which May Be Present To Meet The Public Charge Provisions Of The Law

This form will become a Department of State form.

DATES: Effective September 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, (202) 647–0596.

Dated: August 24, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–23973 Filed 9–18–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1501]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for exemption from the food additive listing regulation requirements.

DATES: Submit written or electronic comments on the collection of information by November 20, 2000.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at: http://www.accessdata.fda.gov/scripts/oc/dockets/comments/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

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: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Threshold of Regulation for Substances used in Food-Contact Articles—21 CFR 170.39 (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless: (1) It conforms to an exemption for investigational use under 409(j); (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6), there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

In the **Federal Register** of July 17, 1995 (60 FR 36582), § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 parts per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

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
170.39	6	1	6	48	288

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The above annual reporting estimate is based on information received from representatives of the food packaging and processing industries and on agency records. In the past, FDA has typically received 60 threshold of regulation exemption requests per year. However, it is estimated that up to 90 percent of the requests that would have previously been submitted under § 170.39 will now be submitted under the premarket notification process for food-contact substances established by section 409(h) of the act.

Dated: September 12, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–23884 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1503]

Agency Information Collection Activities; Proposed Collection; Comment Request; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on orphan drugs.

DATES: Submit written or electronic comments on the collection of information by November 20, 2000.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at: http://www.accessdata.fda.gov/scripts/oc/dockets/comments/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Orphan Drugs, 21 CFR Part 316 (OMB No. 0910–0167)—Reinstatement

Sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aa through 360dd) give FDA statutory authority to: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an ''open protocol'' basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the act and sets forth procedures FDA will use in administering the act with regard to orphan drugs. Section 316.10 specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Section 316.20 specifies the content and format of an orphan drug application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.26 allows an applicant to amend the application under certain circumstances. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining ophan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

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
316.10, 316.12, and 316.14	0	0	0	0	0
316.20, 316.21, and 316.26	90	1.78	160.20	125	20,025
316.22	5	1	5	2	10
316.27	5	1	5	4	20
316.30	450	1	450	2	900
316.36	.2	3	.6	15	9
Total burden hours					20,964

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information requested from respondents represents, for the most part, an accounting of information already in possession of the applicant. It is estimated, based on the frequency of requests over the past 10 years, that 90 persons or organizations per year will request orphan drug designation and that no requests for recommendations on design of preclinical or clinical studies will be received. Based upon FDA experience over the last decade, FDA estimates that the effort required to prepare applications to receive consideration for sections 525 and 526 of the act (§§ 316.10, 316.12, 316.20, and 316.21) is generally similar and is estimated to require an average of 95 hours of professional staff time and 30 hours of support staff time per application.

Estimates of annual activity and burden for foreign sponsor nomination of a resident, agent, change in ownership or designation, and inadequate supplies of drug in exclusivity, are based on total experience by FDA with such requests since 1983.

Dated: September 12, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–23886 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1072]

Agency Information Collection Activities; Announcement of OMB Approval; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Administrative Detention and Banned Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 the **Federal Register** of March 31, 2000 (65 FR 17282), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0114. The approval expires on August 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: September 12, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–24006 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 2000.

Name: National Advisory Council on the National Health Service Corps.

Date and Time:

October 19, 2000; 7:00 p.m.—8:00 p.m.
October 20, 2000; 8:30 a.m.—5:00 p.m.
October 21, 2000; 9:00 a.m.—5:00 p.m.
October 22, 2000; 8:00 a.m.—10:00 a.m.

Place: Hyatt Regency Bethesda 7400 Wisconsin Avenue (One Bethesda Metro Center), Bethesda, Maryland 20814, Phone: (301) 657–1234.

The meeting is open to the public.

Agenda: The Council will focus its agenda on strategic planning.

For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Agenda items and times are subject to change as priorities dictate.

Dated: September 13, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–23951 Filed 9–18–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Wendell Fairbanks, Hastings, ND, PRT–029691.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David P. Johnson, Miduahe, UT, PRT–032827.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Bruce Taylor, Columbia, SC, PRT–032825.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Brigham Young University, Provo, UT, PRT–006998.

The applicant amends an request for a permit to import tissue samples and voucher specimens of wild Giant Amazon River turtles (*Podocnemis expansa*) and Yellow-Spotted River turtles (*Podocnemis unifilis*) from Brazil to include Venezuela and Peru. The previous notification appeared in **Federal Register** Notice Vol. 64, No. 242. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director on or before October 19, 2000.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

Applicant: USGS Biological Resources Division, Anchorage, AK, PRT–766818.

Type of Permit: Take for scientific research.

Name and Number of Animals: Southern and Northern Sea Otters. (*Enhydra lutris lutris* and *Enhydra lutris nereis*); Up to 15 animals from California and up to 40 animals from Alaska, 0.5 to 1.0 gram liver biopsy samples.

Summary of Activity to be Authorized: The applicant requests an amendment to their permit to collect liver biopsy samples for scientific research purposes to determine estimates of contaminants exposure. At the time of previously permitted surgical procedures, a liver sample will be removed by sterile scalpel.

Source of Marine Mammals: As described above and in current permit.

Period of activity: Until February, 2002.

Concurrent with the publication of this notice in the **Federal Register,** the Division of Management Authority is forwarding copies of the application listed above to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: J. Herbert Fisher, Jr., Lancaster, PA, PRT–032816.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.

Applicant: Noah W. Horn, Vasant, VA, PRT–032748.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office on or before October 19, 2000: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 13, 2000.

Charlie Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–23955 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–28605

Applicant: SWCA, Flagstaff, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the following endangered species in Arizona and New Mexico:

Mexican long-nosed bat *(Leptonycteris nivalis)*
lesser long-nosed bat *(Leptonycteris curasoae yerbabuenae)*
Hualapai Mexican vole *(Microtus mexicanus hualpaiensis)*
southwestern willow flycatcher *(Empidonax traillii extimus)*
cactus ferruginous pygmy-owl *(Glaucidium brasilianum cactorum)*
desert tortoise *(Gopherus agassizii)*
bonytail chub *(Gila elegans)*
humpback chub *(Gila cypha)*
Colorado pikeminnow *(Ptychocheilus lucius)*
razorback sucker *(Xyrauchen texanus)*
Gila topminnow *(Poeciliopsis occidentalis)*
woundfin *(Plagopterus argentissimus)*
Kanab ambersnail *(Oxyloma haydeni kanabensis)*
Pima pineapple cactus *(coryphantha scheeri var. robustispina)*

Permit No. TE–31666

Applicant: Prewitt & Associates, Austin, Texas.

Applicant requests authorization for scientific research and recovery purposes to collect the following endangered or threatened species in Texas:

Peck's Cave amphipod *(Stygobromus pecki)*
Coffin Cave Mold beetle *(Batrisodes texanus)*
Kretschmarr Cave Mold beetle *(Texamaurops reddelli)*
Tooth Cave ground beetle *(Rhadine persephone)*
Tooth Cave Pseudoscorpion *(Tartarocreagris texana)*
Bee Creek Cave harvestman *(Texella reddelli)*
Bone Cave harvestman *(Texella reyesi)*
Tooth Cave spider *(Neoleptoneta myopica)*
Texas blind salamander *(Typhlomolge rathbuni)*
Mexican long-nosed bat *(Leptonycteris nivalis)*
Barton Springs salamander *(Eurycea sosorum)*

The following species will not be collected but potentially impacted.

San Marcos salamander *(Eurycea nana)*
fountain darter *(Etheostoma fonticola)*
Big Bend gambusia *(Gambusia gaigei)*
Clear Creek gambusia *(Gambusia heterochir)*
Pecos gambusia *(Gambusia nobilis)*
San Marcos gambusia *(Gambusia georgei)*
Comanche Springs pupfish *(Cyprinodon elegans)*
Leon Springs pupfish *(Cyprinodon bovinus)*
Comal Springs dryopid beetle *(Stygoparnus comalensis)*
Comal Springs riffle beetle *(Heterelmis comalensis)*
Texas wild rice *(Zizania texana)*

Permit No. TE—19458

Applicant: National Park Service, Organ Pipe Cactus National Monument, Ajo, Arizona.

Applicant requests authorization for research and recovery purposes to establish and maintain a refugium to hold approximately 600 desert pupfish, subspecies Quitobaquito desert pupfish *(Cyprinodon macularius eremus).*

Permit No. TE—32576

Applicant: Tetra Tech EM Inc., Albuquerque, New Mexico.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher *(Empidonax traillii extimus)* in various counties in New Mexico.

DATES: Written comments on these permit applications must be received on or before October 19, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30

days of the date of publication of this notice, to the address above.

Stephen C. Helfert,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–23998 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Robust Spineflower (Chorizanthe robusta var. robusta) From Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of a draft recovery plan for the robust spineflower (*Chorizanthe robusta* var. *robusta*) from Santa Cruz County, California. This federally endangered plant taxon is known from four coastal and near-coastal sites in Santa Cruz County, California. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before November 20, 2000, to receive our consideration.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). The draft recovery plan will also be available at the Santa Cruz Public Library. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Ms. Diane K. Noda, Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Botanist, (805) 644–1766, at the above Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure and self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the federally listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for recovery levels to downlist or delist them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for federally listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The robust spineflower is federally listed as endangered. The robust spineflower is restricted to sandy soils along the coast and near-coastal areas in Santa Cruz County, California from Santa Cruz south to Sunset State Beach. It is currently known from four sites. The first site, Pogonip Park, supports two small colonies; the Park is owned and managed by the City of Santa Cruz. The second site is Sunset Beach State Park; a large population is scattered along approximately 1 kilometer (0.5 mile) of backdune habitat. The third site is on a 115-hectare (285-acre) private parcel known as Buena Vista that has been considered for golf course development; small colonies are scattered over 4 hectares (10 acres). The fourth site, located near Rob Roy Junction, is on a 8-hectare (20-acre) private parcel that was recently proposed for a lot split; the population here is scattered over 1.2 hectares (3 acres).

The objective of this draft recovery plan is to provide a framework for delisting the robust spineflower so that protection by the Act is no longer necessary. Actions necessary to accomplish this objective include: Protect robust spineflower habitat through land acquisition, conservation easements, and Habitat Conservation Plans; managing robust spineflower habitat; conduct management-oriented research on the taxon's ecology and biology; review and revise management and recovery plan guidelines; locate additional populations; and establish new populations of the taxon within the historic range of this variety of *Chorizanthe robusta.*

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 13, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 00–23996 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Westwood Tributary Point Office Project, Sacramento County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Westwood Tributary Point Limited (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 2-year permit to the Westwood Tributary Point Limited that would authorize take of the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) incidental to otherwise lawful activities. Such take would occur as a result of development on the Westwood Tributary Point Office Project area in Sacramento County, California. Development will result in the loss of one elderberry plant with two stems which provide habitat for the valley elderberry longhorn beetle.

We request comments from the public on the permit application, which is available for review. The application includes a Habitat Conservation Plan (Plan). The Plan describes the proposed project and the measures that Westwood Tributary Point Limited would undertake to minimize and mitigate take of the valley elderberry longhorn beetle.

We also request comments on our preliminary determination that the Plan qualifies as a ''low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National

Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments should be received on or before October 19, 2000.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825–1846. Comments may be sent by facsimile to 916–414–6712 or 6713.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief of Conservation Planning Division, at the above address or call (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, Plan, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Westwood Tributary Point Office project is located west of Hazel Avenue, south of Folsom South Canal, and north of U.S. Highway 50 in the unincorporated Rancho Cordova area of Sacramento County. The project site is one parcel of a larger development area, which corresponds to an un-sectioned portion of Township 9 North, Range 7 East of the United States Geological Survey ''Folsom, California'' topographic quadrangle. The Applicant is requesting a 2-year incidental take permit for the valley elderberry longhorn beetle.

The Westwood Tributary Point Office project area is currently a partially graded vacant lot. The applicant plans on erecting a 2-story 37,000-square-foot office building with parking facilities on the 3.43-acre site. Other land uses in the surrounding area include a 216-unit high-end apartment village, a 70,000-square-foot, 3-story office building, 2 retail furniture stores, 2 fast-food restaurants, and 2 gas station/convenience marts. Two additional lots are owned by an extended-stay hotel operator.

One small (6-foot-tall) blue elderberry (*Sambucus mexicana*) shrub is present on the property. Westwood Tributary Point Limited has submitted a Plan to minimize and mitigate for the removal (transplantation) of this plant, which is potential habitat for the valley elderberry longhorn beetle, federally listed as threatened under the Act. No beetle exit holes were found in this shrub. The project site does not contain any other rare, threatened, or endangered species or habitat. No critical habitat for any listed species occurs on the project site. Construction of the proposed project would result in the removal of one elderberry shrub with two stems greater than 1-inch diameter at ground level.

Under the Plan, compensation for impacts to the valley elderberry longhorn beetle would conform to the Service's 1999 Conservation Guidelines. The elderberry shrub affected by the proposed project would be transplanted to the Conservation Resources Laguna Creek Mitigation Bank, a Service-approved compensation site. Transplantation would occur after September 15, 2000 and prior to February 15, 2001. To fully comply with the Service's conservation guidelines for the transplantation of elderberry shrubs, and to minimize the effects of take on the beetle, Westwood Tributary Point Limited will purchase one valley elderberry longhorn beetle compensation unit at the Laguna Creek Mitigation Bank. Purchase of this compensation unit will result in the planting of five elderberry plants and five associated native plants to compensate for impacts to two stems. The purchase of this compensation unit will be consummated with an agreement for the sale of one valley elderberry longhorn beetle compensation unit between Westwood Tributary Point Limited and Conservation Resources, LLC.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to minimize and mitigate impacts of the project on the valley elderberry longhorn beetle. Two alternatives to the taking of listed species under the Proposed Action are considered in the Plan. Under the No Action Alternative, no permit would be issued. However, Westwood Tributary Point Limited did not select this alternative as it is inconsistent with local development goals and would result in the undisturbed elderberry shrub being left on the site in an isolated patch of open space with little habitat value. Another alternative would result in the development of another site instead of the described project site. The proposed project is an infill project and has minor or negligible environmental effects. Westwood Tributary Point Limited considers development of the present site as more desirable than construction of the project on an open site in a less-developed area because the use of an alternative site may result in greater environmental effects.

The Service has made a preliminary determination that the Plan qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, Westwood Tributary Point Limited's habitat conservation plan for the Westwood Tributary Point Office Project qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the valley elderberry longhorn beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the valley elderberry longhorn beetle resulting from development of the Westwood Tributary Point Office Project.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or

the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Westwood Tributary Point for the incidental take of the valley elderberry longhorn beetle from development of the Westwood Tributary Point Office Project area. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: September 8, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–23970 Filed 9–18–00; 8:45 am]

BILLING CODE 4130–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of an Application and Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of a Recreational Vehicle Park and Camp Ground on Approximately 1.8 Acres of a 10.516-Acre Property on Park Road 1–C, Bastrop County, Texas

SUMMARY: Marion Kelly Walraven (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–033185–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of an approximately 1.8-acre recreational vehicle park and campground located along Park Road 1–C, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before November 20, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–033185–0 (Walraven) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Marion Kelly Walraven plans to construct a recreational vehicle park and campground on approximately 1.8 acres of the 10.516-acre property located on Park Road 1–C, Bastrop County, Texas. This action will eliminate 1.8 acres or less of Houston toad habitat and result in indirect impacts within the property. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $7,200.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Lynn B. Starnes,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–23997 Filed 9–18–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

San Dieguito Lagoon Restoration Plan Final Environmental Impact Statement/Report

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of final environmental impact statement/report for the San Dieguito Lagoon Restoration Plan, San Diego County, California.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Fish and Wildlife Service (FWS) announces the availability of a final environmental impact statement/report (FEIS/R) for the San Dieguito Lagoon Restoration Plan, San Diego County, California.

DATES: A 30-day review period will follow the Environmental Protection Agency's notice of availability of the FEIS/R on September 15, 2000.

ADDRESSES: Public reading copies of the FEIS/R will be available for review at:

Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008

San Dieguito River Park, 18372 Sycamore Creek Rd., Escondido, California 92025

Del Mar Library, 1309 Camino del Mar, Del Mar, California

Carmel Valley Library, 3919 Townsgate Drive, San Diego, California

Solana Beach Branch Library, 981 Lomas Santa Fe Drive, Suite F, Solana Beach, California

FOR FURTHER INFORMATION CONTACT: Jack Fancher, Coastal Program Coordinator, Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008; phone (760) 431–9440

SUPPLEMENTARY INFORMATION: This FEIS/R has been prepared and is being circulated in accordance with the

National Environmental Policy Act (NEPA). This project involves the proposal to implement a comprehensive habitat restoration plan with a public access component for an approximately 400-acre area known as the San Dieguito Lagoon. The project site is in the western San Dieguito River Valley under the influence of the Pacific Ocean, within the northwestern-most portions of the City of San Diego and the City of Del Mar in San Diego County, CA.

A major component of this planning effort is a tidal restoration proposal to: (1) Restore the aquatic functions of the lagoon through permanent inlet maintenance and expansion of the lagoon's tidal prism; and (2) create subtidal and intertidal habitats on both the east and west sides of Interstate 5, which bisects the project site. It is anticipated that tidal restoration would be accomplished primarily by Southern California Edison and partners (SCE), provided the restoration satisfies the conditions of the California Coastal Commission (CCC) permit for the construction and operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. Upland habitat restoration, non-tidal wetland restoration, endangered species habitat improvements, and public trails and interpretive facilities would be provided by the San Dieguito River Park in cooperation with other agencies and organizations including the Fish and Wildlife Service, Coastal Conservancy, Cities of Del Mar and San Diego, and others.

The Final EIS/R analyzes six project alternatives including the Mixed Habitat, Maximum Tidal Basin, Maximum Intertidal, Hybrid, Reduced Berm, and No Action Alternatives. The lead agencies indicate a preference for the Mixed Habitat alternative. The project includes measures to mitigate some potential impacts, while other mitigation will be made conditions of subsequent permits.

Dated: September 8, 2000.

Elizabeth A. Stevens,

Acting Manager, California-Nevada Office, Fish and Wildlife Service.

[FR Doc. 00–23728 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On January 6,1998, a notice was published in the **Federal Register,** Vol. 63, No. 3, Page 570, that an application had been filed with the Fish and Wildlife Service by Arthur Cantando for a permit (PRT–837847) to import one polar bear *(Ursus maritimus)* trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on August 29, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203; Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: September 13, 2000.

Charlie Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–23956 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–100–00–1210–DA]

Resource Advisory Council Meeting, Missoula, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting

SUMMARY: The Western Montana Resource Advisory Council will convene at 9:00 a.m., Thursday, October 5, 2000, at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana. Issues will include the Whitetail-Pipestone Travel Management Plan, the Bureau of Land Management's agreement with the Bureau of Reclamation to co-manage Canyon Ferry, and the Centennial Travel Management Plan. Meeting will end at 4:00 p.m.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, BLM Missoula Field Manager, 406–329–3914 or Jean Nelson-Dean at 406–533–7617.

Dated: September 7, 2000.

Richard M. Hotaling,

Field Manager.

[FR Doc. 00–23965 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection survey.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) to conduct a new survey on ''Labor Migration and the Deepwater Oil Industry.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by October 19, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0091), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. For details on the proposed survey or to obtain a copy of the survey questions, you may contact Harry Luton, in the MMS Gulf of Mexico Regional Office, telephone (504) 736–2784.

SUPPLEMENTARY INFORMATION:

Title: Survey—Labor Migration and the Deepwater Oil Industry.

OMB Control Number: 1010–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition.

The OCS Lands Act (at 43 U.S.C. 1346, Environmental Studies) instructs the Secretary of the Interior to conduct studies to establish environmental information as he deems necessary and to monitor the human, marine, and coastal environments. The purpose of the studies is to provide time-series and data trend information which can be used to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studied and monitored, and to design experiments to identify the causes of such changes. This authority and responsibility are among those delegated to MMS.

MMS proposes to conduct a survey to examine the consequences of international labor on four port communities in southern Louisiana. The information collected will aid MMS in understanding the impact of foreign labor on the well-being of communities in southern Louisiana. The scientific information is needed to understand the concerns, fears, and desires of communities with respect to OCS activities, and it is necessary for successful operation of the OCS oil and gas program in the region.

Questions in the survey will address the respondent's historical ties to the oil and gas industry; current views about his/her community, impact of the presence of foreign-born immigrants in the four communities, and background and household information.

Responses are voluntary. No proprietary items or questions of a sensitive nature will be collected.

Frequency: This will be a one-time data collection activity.

Estimated Number and Description of Respondents: Approximately 200 randomly selected households in each of the four communities (800 respondents).

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: Approximately 25 minutes per survey for the primary data collection effort. Follow-up discussions, when held, will average approximately 20 minutes. The total annual burden is estimated at 340 hours (333 hours for primary survey + 7 hours for follow-up conversations).

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no non-hour cost burdens to the respondents.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on June 22, 2000, we published a **Federal Register** notice (65 FR 38852) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. We have received no comments in response to that initial notice. If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 19, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 29, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–24014 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Extension of Comment Period to Notice of Proposed Year-Round Closure at Fort Funston

A notice of proposed year-round closure at Fort Funston in the Golden Gate National Recreation Area was published in the **Federal Register** on July 18, 2000 (65 FR 44546), and amended on July 26, 2000 (65 FR 45988). The comment period closed on September 18, 2000. This document extends the comment period. Public comments on this notice must be received by October 6, 2000.

Dated: September 15, 2000.

Brian O'Neill,

Superintendent, Golden Gate National Recreation Area.

[FR Doc. 00–24071 Filed 9–18–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 5, 2000 at 65 FR 41490, allowing for a 60-day public comment period. No comments were received by the INS on the proposed extension of the current information collection.

On June 28, 2000 at 65 FR 39926, the INS published a notice in the **Federal**

Register allowing for a 60-day public review and comment period on a proposed revision to Form N–400. Numerous comments were received by the public on the proposed revision of the form and will be addressed in the submission of the information collection request to OMB. Until such clearance is approved by OMB, the INS is requesting an extension without change of the current information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 19, 2000.This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items 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: Lauren Wittenberg, Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530; 202–395–4318.

Written comments and 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 functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 collection:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *Title of the form/collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–400. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The information collected is used by the INS to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 700,000 responses at 4 hours and 30 minutes (4.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,031,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202–514–3291), Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Robert B. Briggs, Clearance Officer, Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: September 11, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–24050 Filed 9–18–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of Private Correctional Facilities in Arizona and California

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The Bureau of Prisons (BOP) will prepare a DEIS for a Contractor-Owned and Contractor-Operated private correctional facility(ies) to house sentenced criminal aliens. The BOP is facing unprecedented growth in its inmate population. As a result, low security federal correctional institutions will be especially impacted. The projected growth in the population of sentenced criminal aliens will further exacerbate these low security population demands.

The BOP will be soliciting for a Contractor-Owned and Contractor-Operated correctional facility(ies) to house approximately 4,500 low security, male, non U.S. citizen criminal aliens. Proposed facility(ies) may include construction of a new facility, expansion of an existing facility, or use of an existing facility. Twenty sites throughout Arizona and California have been identified by contractors and offered to the BOP for consideration. The proposed sites have been submitted by the following contractors:

Cornell Corrections: (1) 80 acres of vacant, undeveloped land located west of Rancho Road and north of Millux Road near the City of Arvin, CA; (2) 77 acres of vacant, undeveloped land located along the south side of State Highway (SH) 186 and approximately 1,300 feet west of Rex Allen Jr. Drive near the City of Willcox, AZ; (3) 80 acres of vacant, undeveloped land located west of Sunset Boulevard and the Central Main Channel approximately 600 feet north of Cole Road near the city of Calexico, CA; (4) 79.09 acres of vacant, unimproved western Mojave Desert land located north of the BNSF railroad right-of-way near the city of Barstow, CA; (5) 88.24 acres of undeveloped land located in Snowflake, AZ.

Dominion Correctional Properties: (1) 196.2 acres of land of which 36.2 acres is proposed for the location of a sewage treatment facility, located SE 1/4 of Section 15, T 19 N, R 18 W, of the Gila and Salt River Meridian near the city of Kingman, AZ.

Alternative Programs, Inc.: (1) 80 acre parcel of land located west of Avenue D, between County 23rd Street and County 24th Street in San Luis, AZ.

Wackenhut Corrections Corporation: (1) 72 acres of agricultural land located in the southwest corner of Scofield Avenue and the undeveloped Poso Avenue alignment in Wasco, CA; (2) 64 acres of vacant land located west of Lenwood Road, between Jasper and Agate Roads near Barstow, CA; (3) 160 acres of undeveloped land located at the northwest corner of Arica and La Palma Roads in Eloy, AZ.

Correctional Services Corporation: (1) Four adjacent parcels of land, totaling

approximately 97 acres each. The site is bordered by Anchor Avenue to the east, Parlier Avenue to the north, Monson Avenue to the west and East Manning Avenue to the south, near the city of Orange Cove, CA. (2) 160 acres of agricultural land bordered by Clark Road to the east and beyond by an Imperial Irrigation District (IID) irrigation canal and alfalfa crops.

The site is bordered by a vacant parcel with abandoned wooden structures to the north and beyond by the Imperial County detention facility. A dirt road borders the site to the west with an IID drainage canal and alfalfa crops located beyond. The site is bordered by a dirt road to the south and beyond by alfalfa crops, approximately three miles south of El Centro, CA; (3) 21 acres of agricultural land located at the northeastern edge of the town of Florence, AZ; (4) 235 acres of agricultural land bordered on the west by an asphalt road and agricultural land. The site is bordered on the north and east by dirt roads, irrigation ditches, and agricultural land. Located immediately south of the southeast corner of the site is a narrow strip of land along South Carter Lane, three miles northeast of the town of Eloy, AZ; (5) 100 acres of land located on the Safford Municipal Airport property approximately five miles northeast of Safford, AZ; (6) 115 acres of land bordered by U.S. 191 on the west, East Cardinal Drive on the north, South Lonesome Lane and residences on the east, and residences and undeveloped land on the south, approximately 4.5 miles south of Safford in Lebanon, AZ; (7) 136 acres of agricultural land bordered by E. Adams Avenue to the north, a dirt road to the east, E. Summer Avenue to the south and E. Hill Avenue to the west, approximately 3 miles west of Orange Cove, CA.

Corrections Corporation of America: (1) 20 acres of land that consists of 12 separate buildings located about 3,500 feet southeast of the Gila River and approximately 3/4 miles northeast of the Town of Florence between U.S. Route 89 and Bowling Road, Florence, AZ.

Imperial County Sheriff's Department: (1) 80 acre site located along the south side of McCabe Road and adjacent to the west side of Sperber Road in the agricultural area south of the city of El Centro, CA.

City of Shafter: (1) 15.97 acres of land located 676 feet east of Beech Street on the north side of Los Angeles Street in the southeast area of the city of Shafter, CA.

Each proposed site submitted to the BOP is in response to the Commerce Business Daily Notice issued June 13th. The notice required potential offerors to submit a Phase I Environmental Survey conducted in accordance with the American Society for Testing and Materials, Standard Practice for Environmental Site Assessment Process. Also included as a ''non-scope consideration'' under Chapter 12 of the Standard Practice, are a delineation or identification of on-site wetlands, and an analysis of potential impacts to threatened or endangered species, or species of special status. In further evaluation of these sites, several aspects will receive detailed examination including utilities, traffic patterns, noise, cultural resources, threatened and endangered species and land uses. The BOP intends to award a firm-fixed price contract with award-fee incentives; a potential term of ten years consisting of a three-year base and seven one-year option periods; a performance-based statement of work based generally on the American Correctional Association Standards; and a management emphasis on contractor quality control. After publication of this notice, the BOP will issue a Request for Proposals (RFPs). Proposals may be offered for any or all of the 20 sites.

Alternatives

Alternatives will include the no action alternative, and all proposals received in response to the RFPs. Each alternative will be identified and fully examined. The DEIS will not contain a preferred alternative(s).

Scoping Process

Pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA), a Scoping process will be conducted. As part of this process, public meetings will be held in Arizona and California to identify issues of concern for analysis during the NEPA process. Information packets containing a description of each site will be available during the meetings. Copies of the Phase I Environmental Site Assessments will be made available upon written request. During the preparation of the DEIS, there will be numerous opportunities for public involvement. The meetings, locations, dates and times will be well publicized in the local newspaper of record in the affected communities adjacent to the potential sites. Meetings will be held to allow interested persons to voice their concerns on the scope and significant issues to be examined as part of the NEPA process.

The Scoping process is being held to provide for timely public comments and understanding of Federal plans and programs with possible environmental consequences as required by NEPA and the National Historic Preservation Act of 1966.

DEIS Preparation

Public notice will be given in the **Federal Register** and the local newspaper of record concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Attention: Debra J. Hood, Telephone (202) 305–1102, Telefacsimile (202) 616 6024, E-mail: siteselection@bop.gov

Dated: September 13, 2000.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 00–24051 Filed 9–18–00; 8:45 am]

BILLING CODE 4410–05–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before November 20, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments

on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy.

Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Effective underground coal mine ventilation is necessary to protect against mine fires and explosions. Fresh air is coursed throughout the mine ventilation system to prevent asphyxiation of the miners from methane, carbon dioxide, carbon monoxide, and other gases commonly encountered in coal mines. Ventilation is the primary method of controlling miners' exposure to respirable dust and preventing the development of pneumoconiosis (black lung disease). In enacting Section 303(a) of the Mine Act, Congress expressly recognized these and related dangers associated with inadequate ventilation.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Ventilation Plans, Tests, and Examinations in Underground Coal Mines, pending approval of the proposed rule on Plan Verification. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (http://www.msha.gov) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

Underground coal mines are harsh, hostile, and deadly working environments. The ventilation system is one of the most vital life support systems in underground mining. An effective ventilation system is essential for maintaining a safe and healthful working environment. Ventilation related problems in underground coal mines have resulted in thousands of fatalities from explosions, fires and asphyxiation. In addition, the debilitating occupational lung diseases, black lung and silicosis, are controlled by ventilation practices.

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane, a colorless, odorless explosive gas, is liberated from the coal strata. Other noxious gases and dusts from mining and blasting may be present. These explosive and noxious gases and dusts must be diluted, rendered harmless, and carried out of the mine by the ventilating currents. Sufficient air must be provided to maintain the air quality and dust concentrations in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. The mining environment is constantly changing as new openings are excavated, roof falls close entries, water collects and restricts openings, etc. Due to this constantly changing environment, frequent tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination requirements of 75.360 through 75.364 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically caused numerous fatalities.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Recordkeeping: 1 Year.

Affected Public: Business or other for-profit.

Frequency: Quarterly/on occasion.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
75.310	980	weekly	65,612	7 minutes	7,523
75.312	980	daily	1,293	.013 minutes	99,739
75.312(c)(d)	980	monthly	23,520	5 minutes	3,920
75.312(g)	620	on occasion	7,440	5 minutes	620
75.312(g)(2)(ii)	23	on occasion	276	10 minutes	46
75.342	980	monthly	39,372	.267 minutes	10,515
75.351(h)	60	monthly	1,560	3.836	5,984
75.360	980	on occasion	1,103,640	1.33256 hrs	1,470,667
75.361	980	on occasion	15,000	30 minutes	7,500
75.362	980	on occasion	864,535	.7434 minutes	642,744
75.363	980	on occasion	76,700	.1333 minutes	10,224
75.364	980	on occasion	44,740	9.1837 hours	410,878
75.370	980	on occasion	3,878	10 hours	38,226
75.382	300	weekly	15,000	1 hour	15,000

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
Totals			2,262,566	1.20376 hours	2,723,586

*Discrepancies due to rounding.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $194,256.

Total Annualized Capital/Startup Costs:

Total Operating and Maintenance Costs: $171,574.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 13, 2000.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 00–24009 Filed 9–18–00; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101.6, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Preservation. NARA uses the Committee's recommendations on NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

DATES: October 26, 2000, from 9 a.m. to 4 p.m.

ADDRESSES: National Archives and Records Administration, 8601 Adelphi Road, lecture rooms B & C, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Alan Calmes, Secretary, 301–713–7403.

SUPPLEMENTARY INFORMATION: The agenda for this meeting of sound recording experts to advise and provide guidance for the preservation and storage of the permanently valuable audio recordings of the Federal Government is:

1. Overview of the variety of audio formats in archival holdings.
2. Current archival preservation reformatting techniques.
3. Technical discussion of new preservation format alternatives.
4. Recommendations.

This meeting will be open to the public, but seating may be limited.

Dated: September 13, 2000.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 00–23958 Filed 9–18–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Design section (Access, Education and Heritage/Preservation categories), to the National Council on the Arts will be held from October 5–6, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506. A portion of this meeting, from 11 a.m. to 12 p.m. on October 6th, will be open to the public for policy discussion and guidelines review.

The remaining portions of this meeting, from 9 a.m. to 6 p.m. on October 5th, and from 9–11 a.m. and 12–2:45 p.m. on October 6th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: September 11, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–24017 Filed 9–18–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

AmerGen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (the licensee) for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment along with associated exemption requests would revise the Technical Specification reactor vessel pressure/temperature limits for CPS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes to the CPS reactor coolant system (RCS) pressure/temperature (P/T) limits do not modify the boundary, operating pressure, materials or seismic loading of the reactor coolant system. The proposed changes do adjust the P/T limits for radiation effects to ensure that the RPV fracture toughness is consistent with analysis assumptions and NRC regulations. Thus, the proposed changes do not involve a significant increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the control of radiological consequences is affected. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the reactor pressure vessel pressure-temperature limits do not affect the assumed accident performance of any structure, system or component previously evaluated. The proposed changes do not introduce any new modes of system operation or failure mechanisms. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The methodology for determining the RPV/RCS P/T limits ensures that the limits provide a margin of safety to the conditions at which brittle fracture may occur. The methodology is based on requirements set forth in Appendix G and Appendix H of 10 CFR 50, with reference to the requirements and guidance of ASME Section XI, and on guidance provided in Regulatory Guide 1.99, Revision 2. The P/T limits currently specified in the CPS Technical specification are based on this methodology, as previously approved via Amendments 51 and 109 to the CPS Operating License. The revised P/T limits are also based on this methodology except as modified by application of the noted Code Cases (in addition to the change in the fluence value and beltline material assumed for analysis).

Although the Code Cases constitute relaxation from the current requirements of 10 CFR 50 Appendix G, the alternatives allowed by the Code are based on industry experience gained since the inception of the 10 CFR 50 Appendix G requirements for which some of the requirements have now been determined to be excessively conservative. The more appropriate assumptions and provisions allowed by the Code Cases maintain a margin of safety that is consistent with the intent of 10 CFR 50 Appendix G, *i.e.*, with regard to the margin originally contemplated by 10 CFR 50 Appendix G for determination of RPV/RCS P/T limits. On this basis, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention

must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 25, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov)

Dated at Rockville, Maryland, this 12th day of September 2000.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–24057 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket Nos. 50–269, 50–270, and 50–287]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, respectively, located in Seneca, South Carolina.

The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 3.8.1.9.a as it relates to the annual test of the Keowee Hydro Units (KHUs) by adding a Note stating: ''The upper limits on frequency and voltage are not required to be met until the NRC issues an amendment that removes this Note (license amendment request to be submitted no later than April 5, 2001).''

The present annual SR requires verification on an actual or simulated emergency actuation signal that each KHU automatically starts and achieves an output frequency ≥ 57 Hertz (Hz) and ≤ 63 Hz and an output voltage ≥ 13.5 kilo-volts (kV) and ≤ 14.49 kV in ≤ 23 seconds. Currently, when a KHU is started, it reaches rated frequency and voltage within the required 23 seconds. However, due to the physical characteristics of the KHU, its speed continues to increase, causing the frequency to exceed the limits specified in SR 3.8.1.9.a for a short period of time. Following this brief overshoot, the frequency returns to within the limits specified in SR 3.8.1.9.a. This is consistent with the way the KHUs have been operated since initial licensing and complies with the licensee's interpretation of the SR.

As a result of recent discussions with the NRC, it became clear that interpretation differences existed between the staff and the licensee concerning this SR. The staff interpreted the SR to imply that the limits on frequency and voltage constitute upper and lower limits for operation of the KHUs. In a telephone conference call on September 5, 2000, the staff informed the licensee of this interpretation, and that Oconee Nuclear Station, Units 1, 2 and 3, were not in compliance with TS 3.8.1 because the frequency briefly exceeded the upper limit specified in the SR in response to an actual or simulated emergency actuation signal. The licensee stated that this would require declaring the KHUs inoperable, entry into TS 3.0.3, and shutdown of the three units. Therefore, the licensee requested that a Notice of Enforcement Discretion (NOED) be granted pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, and be effective until such time as the staff approves an amendment modifying the SR, which was submitted on September 7, 2000. The staff granted the NOED on September 5, 2000, and, as a result, is processing this amendment under exigent circumstances in accordance with the NRC's policy regarding exercising of enforcement discretion.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under

exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The License Amendment Request (LAR) involves adding a note to Surveillance Requirement (SR) 3.8.1.9[.a] to waive the surveillance requirements associated with the upper limits for KHU voltage and frequency. The waiver of these requirements will allow Duke to avoid an unplanned forced shutdown of all three Oconee units, and the potential safety consequences and operational risks associated with that action. It will also provide an opportunity for Duke to work with the NRC to resolve any technical concerns.

This LAR involves an interpretation issue, rather than the inability of the KHU to perform its intended safety function.

Waiving the requirements to meet the upper voltage and frequency limits associated with SR 3.8.1.9.a does not involve: (1) A physical alteration to the Oconee Units; (2) the installation of new or different equipment; (3) operating any installed equipment in a new or different manner; or (4) a change to any set points for parameters which initiate protective or mitigative action.

There is no adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve set points, or radwaste systems. No new radiological release pathways are created.

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The LAR involves adding a note to allow for a temporary waiver of [the upper voltage and frequency limits of] SR 3.8.1.9.a associated with the KHUs.

Waiver of this surveillance requirement does not involve a physical effect on the unit, nor is there any increased risk of a unit trip or reactivity excursion. No new failure modes or credible accident scenarios are postulated from this activity.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

No. The LAR involves adding a note to allow waiver of the requirements to meet [the upper voltage and frequency limits of] SR 3.8.1.9.a. Temporarily waiving the requirement to meet this [upper voltage and frequency limits of this] SR will allow Duke to avoid an unplanned forced shutdown of all three Oconee Units and the potential safety consequences and operational risks associated with that action. It will also allow Duke the opportunity to work with the NRC to resolve any technical concerns.

Temporarily waiving the requirement to meet the upper voltage and frequency limits associated with SR 3.8.1.9.a does not involve: (1) A physical alteration of the Oconee Units; (2) the installation of new or different equipment; (3) operating any installed equipment in a new or different manner; (4) a change to any set points for parameters which initiate protective or mitigative action; or (5) any impact on the fission product barriers or safety limits.

Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 7, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of September 2000.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–24059 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641, License No. 42–23539–01AF, Department of the Air Force; Docket No. 040–08767, License No. SUC–1380, Department of the Army; Docket No. 030–29462, License No. 45–23645–01NA, Department of the Navy]

Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated June 1, 2000, Doug Rokke, Ph.D. (petitioner) has requested that the Nuclear Regulatory Commission (NRC) take action with regard to the Department of the Air Force, the Department of the Army, and the Department of the Navy. The petitioner requests a ''formal NRC hearing to consider the revocation of the master DU [depleted uranium] license for the U.S. Department of Defense and all services, implementation of substantial fines and consideration of personal criminal liability.''

As the basis for this request, the petitioner states that ''the continuing deliberate use of DU munitions during battle and during peacetime is resulting in serious health and environmental consequences,'' according to documents and references in his possession.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206, appropriate action will be taken on this petition within reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20003–1527.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 8th day of September, 2000.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–24018 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Company; Dresden Nuclear Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–237 and 50–249]

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain

requirements of 10 CFR 50.60(a) for Facility Operating Licenses Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated February 23, 2000, that the staff exempt ComEd from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640.

Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of two, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60(b). Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60(b).

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement

ASME Code Case N–588 and Code Case N–640 in order to revise the method used to determine the reactor coolant system (RCS) P–T limits, because continued use of the present curves unnecessarily restricts the P–T operating window. Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Dresden with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Cases N–588 and N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Dresden Nuclear Power Station, Units 2 and 3, dated November 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on July 19, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 23, 2000, which is available for public inspection at the NRC Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of August 2000.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–24020 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Dresden Nuclear Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating Licenses Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would add the Siemens Power Corporation RODEX2A methodology to the Dresden, Units 2 and 3, Technical Specifications (TSs) list of approved methodologies that may be used to determine core operating limits. The proposed action also adds a condition to the Dresden, Units 2 and 3, licenses to limit the maximum rod average burnup to 60 gigawatt-days per metric ton of uranium (GWD/MTU). Adding the RODEX2A methodology to the TSs will permit the use of extended fuel burnup limits. RODEX2A supports maximum rod average burnups to 62 GWD/MTU and uranium-235 (U–235) enrichments up to 5 percent by weight. However, the license condition will limit burnup to 60 GWD/MTU until the completion of an NRC Environmental Assessment supporting increased limits.

The proposed action is in accordance with the licensee's application for amendment dated August 3, 1999, as supplemented by letter dated February 25, 2000.

The Need for the Proposed Action

The proposed action is needed in order for the licensee to have the flexibility to use fuel with increased burnup. The changes in operating parameters and limits will allow longer operating cycles and result in fewer fuel assemblies being needed.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that, although the extended burnup may slightly change the mix of radionuclides that might be released in the event of an accident, there are no significant adverse environmental impacts associated with the proposed action.

The staff published ''Extended Burnup Fuel Use in Commercial LWR's; Environmental Assessment and Finding of No Significant Impact'' on February 29, 1988 (53 FR 6040). This generic environmental assessment of extended fuel burnup in light water reactors found that ''no significant adverse effects will be generated by increasing the present batch-average burnup level of 33 GWD/MTU to 50 GWD/MTU or above as long as the maximum rod average burnup level of any fuel rod is no greater than 60 GWD/MTU.'' In addition, the environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988. That assessment was published in connection with an Environmental Assessment related to the Sheron Harris Nuclear Plant, Unit 1, which was published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322). In these assessments, collectively, the staff concluded that the environmental impacts summarized in Table S–3 of 10 CFR 51.51 and in Table S–4 of 10 CFR 51.52 for a burnup level of 33 GWD/MTU and enrichments up to 4 weight percent U–235 are conservative and bound the corresponding impacts for burnup levels up to 60 GWD/MTU and enrichments up to 5 weight percent U–235. These findings are applicable to the proposed action at Dresden which will limit burnup to 60 GWD/MTU and allow enrichments up to 5 weight percent U–235.

The proposed action will not significantly increase the probability or consequences of accidents, no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Dresden Nuclear Power Station, Units 2 and 3, dated November 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 12, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 3, 1999, as supplemented on February 25, 2000, which are available for public inspection at the NRC Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http:\\www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 11th day of September 2000.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–24058 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Revised

The agenda for the 121st meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled to be held on September 19–20, 2000 at the Crowne Plaza Hotel, Ballroom C, 4255 South Paradise Road, Las Vegas, Nevada, has been revised to include the following topics for discussion:

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, September 19, 2000

A. 8 a.m.—9 a.m.: ACNW Planning and Procedures (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

B. 9 a.m.—12 Noon: Key Technical Issues (KTI) (Open)—Representatives of the NRC staff will discuss their process and most recent progress in the achieving closure of several KTIs.

C. 1 p.m.—4:30 p.m.: Public Comments (Open)—The Committee will hear comments from stakeholders. Among those groups that have indicated their intent to provide brief comments: the State of Nevada, counties, native American tribes, and the Nevada Nuclear Waste Task Force. Other comments from parties in attendance will be accepted as time permits.

D. 4:30 p.m.—5:30 p.m.: 2001 Action Plan Issues (Open)—The Committee will discuss potential future technical activities for the upcoming year.

E. 5:30 p.m.—6 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of the Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Wednesday, September 20, 2000

F. 8 a.m.—8:30 a.m.: DOE's Progress on Proposed Repository at Yucca Mountain, Nevada (Open)—Representatives of the Department of Energy (DOE) will brief the Committee on recent progress at Yucca Mountain.

G. 8:30 a.m.—9:15 a.m.: DOE's Site Recommendation Considerations Report (SRCR) (Open)—Representatives of the DOE will update the Committee on the status of the SRCR.

H. 9:15 a.m.—12 Noon: Total System Performance Assessment—Site Recommendations (TSPA-SR) (Open)—DOE representatives will provide an update and discuss major aspects of the TSPA-SR.

I. 1 p.m.—2 p.m.: Chlorine ^{36} Issue (Open)—DOE representatives will provide an update as to their most recent findings on this issue.

J. 2 p.m.—3:15 p.m.: Fluid Inclusion Issues (Open)—A panel comprised of DOE, State of Nevada and UNLV experts will discuss the results of their most recent studies on this issue.

K. 3:30 p.m.—4:30 p.m.: Site Status—Tour (Open)—A DOE representative will provide the ACNW with a preview of the relevant activities and tour stops scheduled for the September 21st visit by the Committee of the proposed repository at Yucca Mountain.

L. 4:30 p.m.—6:30 p.m.: Prepare for the October Public Meeting with the Commission (Open)—The ACNW will finalize preparations for the next public meeting with the Commission. The meeting is tentatively scheduled for October 17, 2000. Potential topics for discussion include: Highlights of the Committee's recent European trip, Risk Informed Regulation in the Office of Nuclear Material Safety and Safeguards, ACNW Action Plan and Priority Topics, and comments on the staff's Yucca Mountain Site Sufficiency Strategy.

All other items pertaining to this meeting remains the same as published in the **Federal Register** on Tuesday, September 5, 2000 (65 FR 53771).

Further information regarding this meeting can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 a.m. and 5 p.m. EDT.

Dated: September 12, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–24060 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 4, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 4, 2000—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 7, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–24061 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a supplement to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to

the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Supplement 1, ''Preparation of Supplemental Environmental Reports for Applications To Renew Nuclear Power Plant Operating Licenses,'' to Regulatory Guide 4.2, ''Preparation of Environmental Reports for Nuclear Power Stations,'' provides guidance on the format and content of an environmental report to be submitted as part of an application for renewal of a nuclear power plant operating license.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For further information on the guide, contact D.P. Cleary at (301)415–3903 or by email at <DPC@NRC.GOV>.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Recent regulatory guides, both draft and active, may be read or downloaded from the NRC website at *http://www.nrc.gov*. Copies of the supplement are also posted in NRC's Electronic Reading Room at the same site under Accession Number ML003710495. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301)415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 29th day of August 2000.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 00–24019 Filed 9–18–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43279; File No. SR–Amex–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to an Increase in the Fees for Associate Members and Off-floor Traders

September 11, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange of 1934 (''Exchange Act'' or ''Act'')[1] notice is hereby given that on August 11, 2000, 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

Pursuant to the provisions of section 19(b)(1) under the Exchange Act,[2] the Exchange is herewith filing a proposed rule change to amend Article IV, sections 1(d) and (f) and Article VII, Section (3) of the Exchange Constitution to increase the fees for Associate Members and off-floor traders. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

American Stock Exchange Constitution

Article IV

Sec. 1(a)–(c) No change.

(d) Associate membership—The number of associate members shall be such as may be determined by the Board of Governors from time to time. Any person not less than the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business either as a partner of a firm or as a director or executive officer of a corporation may make application for associate membership.

An application for associate membership shall be in writing and shall be in such form, and contain such information, as the Exchange may from time to time prescribe. No person may be admitted to associate membership unless his application is approved by the Exchange, in accordance with the provisions of Section 1(g) of this Article IV. Any person admitted to associate membership in the American Stock Exchange *LLC* [Inc.] prior to September 4, 1962, as an individual or as a partner of a firm shall remain an associated member only so long as he is actively engaged in the business of buying and selling securities as broker or dealer. Any person admitted to associate membership in the Exchange or in the American Stock Exchange *LLC* [Inc.] after September 4, 1962, as a partner of a firm shall remain as associate member only so long as he remains a partner of such firm or of another firm continuing the business of the first firm or a director or executive officer of a corporation continuing the business of the first firm. Any person admitted to associate membership in the Exchange or in the American Stock Exchange *LLC* [Inc.], whether before of after September 4, 1962, as a director or executive officer of a corporation shall remain an associate member only so long as he remains a director or executive officer of such corporation or of another corporation continuing the business of the first corporation.

An associate member and the member firm or member corporation of which he is a partner or a director or executive officer shall have such rights and privileges, as may, from time to time, be prescribed by the Board of Governors. Where an associate member and partner or director or executive officer of a member firm or corporation ceases to be such a partner, director or officer of such firm or corporation such firm or corporation may, within thirty days following such death, retirement and resignation or termination of office or within such further time as the Exchange may authorize, nominate for associate membership a general partner in such form or a director or executive officer, the Exchange may authorize the firm in which he as a partner or the corporation in which he was a director or executive officer to have the status of a temporary associate member firm or a temporary associate member corporation, as the case may be, for a period of thirty days from the date of such death or for such further time as the Exchange shall determine, and upon such conditions as the Exchange may fix, and the exchange may at any time during such period withdraw such authorization in which event such status shall terminate.

[Each] *A*[a]ssociate member*s for whom the Exchange is the Designated Examining Authority shall be required to pay* [who has paid] an annual membership fee as set forth in Article VII, Section 1 herein[,] *and, upon payment of the optional annual electronic access fee* shall be entitled, [during the period for which such fee has been paid and] while such member remains in good standing, to maintain electronic access to (i) the PER/AMOS system of the Exchange, and (ii) such other automated systems of the Exchange as the Board may from time to time determine. *Effective August 7, 2000, all new associate members shall be required to pay the annual electronic access fee as well as the monthly and/or annual fees.*

An associate member may, if accompanied by a regular member, visit the Floor of the Exchange but shall not have the privilege of transacting business thereon.

(e) No change.

(f) No person shall be approved for regular, options principal or associate membership or admitted to the privileges thereof until the

[1] 15 U.S.C. 78s(b)(1).

[2] *Id.*

Exchange shall have received the initiation fee, and, in the case of associate members, [who have elected to maintain] *the fee for* electronic access to Exchange systems as provided in Article IV, Section 1(d)[,] and the *monthly and/or* annual membership fees, required by Article VII[.], Section 1(e).

(g)–(j) No change.

* * * * *

Article VII

Sec. 1(a)–(d) No change.

(e) Associate members—The initiation fee for associate membership shall be a sum equal to 5% of the latest price at which a regular membership shall have been sold and transferred to an applicant for regular membership, otherwise than for a nominal consideration or through a private sale prior to the date when such initiation fee is due, provided, however, that the initiation fee for an associate member who is approved as the nominee of an associate member firm or corporation pursuant to Article IV, Section 1(d) shall be $100. *The annual membership fee for associate membership shall be $4,000 per month for associate member firms and $3,000 per year for individual associate members and off-floor traders. Associate members shall be permitted to waive these fees by demonstrating to the Exchange's Financial Regulatory Services Department that ten percent (10%) of the associate member's and/or individual off-floor trader's volume is transacted on the Floor of the Exchange.* The annual membership fee for associated membership access to the Exchange electronic systems as provided in Article IV, Section 1(d) shall be fixed by the Board once a year, and shall be a sum equal to 10% of the average price at which regular memberships shall have been sold and transferred to applicants for regular membership, otherwise than for nominal consideration or through private sale, during the preceding twelve months. *Effective August 7, 2000, all new associate members shall be required to pay the annual electronic access fee as well as the monthly and/or annual fees.* Such initiation, [and/or] *monthly and/or* annual *and electronic access* fees shall be paid prior to the approval by the Exchange of an applicant for associate membership, and prior to renewal of such membership at the end of the period for which such fee*s* ha*ve*[s] been paid.

(f) No change.

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 Exchange 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

Recently, other exchanges [3] have increased the fees and dues charged to off-floor traders to deter applicants who apply for exchange membership merely to satisfy the SEC's exchange membership requirement, while most of the trading is done away from the exchange. The Exchange has been subject to significantly increased costs in the areas of admissions, examinations and enforcement because it is the Designated Examining Authority (''DEA'') for a number of joint back-office and day-trading operations which bring little, if any, business to the Exchange, but represent a serious regulatory concern.

To cover increased administrative and examination costs, the Exchange proposes to charge Associate Members, where the Exchange is the DEA, a fee of $4,000 per month for Associate Member Firms and $3,000 per year for individual off-floor trader.[4] Associate Members will be permitted to waive these fees by demonstrating to the Exchange's Financial Regulatory Services Department that ten percent (10%) of the Associate Member's and/or individual off-floor trader's volume is transacted on the Floor of the Exchange. Effective August 7, 2000, all new Associate Members and individual off-floor traders will be required to pay the annual electronic access fee as well as the monthly and/or annual fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act [5] in general and furthers the objectives of section 6(b)(4) of the Act [6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Exchange Act [7] and subparagraph (f) of Rule 19b–4 [8] under the Act in that it is establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–00–44 and should be submitted by October 10, 2000.

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[3] *See* Securities Exchange Act Release No. 42497 (Mar. 6, 2000), 65 FR 14005 (Mar. 15, 2000) [File No. SR–PHLX–00–09] and Securities Exchange Act Release No. 43074 (July 26, 2000), 65 FR 47529 (Aug. 2, 2000) [File No. SR–CHX–00–23] relating to registrations and annual fees for off-floor traders; *but see* Securities Exchange Act Release No. 43257 (Sept. 6, 2000) [File No. SR–PHLX–00–73].

[4] This increase in fees will be effective November 1, 2000. Telephone conversation between Florence Harmon, Senior Special Counsel, SEC, and Robert Kline Jr., Managing Director, Membership Services, AMEX (Sept. 8, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19(b)(4).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–24011 Filed 9–18–00; 8:45 am]

BILLING CODE 8010–01–M

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 October 19, 2000. 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: Value of Worker Training Program to Small Business.

No:

Frequency: On Occasion.

Description of Respondents: Small and large businesses.

Annual Responses: 2,488.

Annual Burden: 1,244.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–23962 Filed 9–18–00; 8:45 am]

BILLING CODE 8025–01–U

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3293]

State of West Virginia

Kanawha County and the contiguous Counties of Boone, Clay, Fayette, Jackson, Lincoln, Nicholas, Putnam, Raleigh, and Roane in the State of West Virginia constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on September 1 and 2, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 13, 2000 and for economic injury until the close of business on June 11, 2001 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.687
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 329306 for physical damage and 9I7700 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–24024 Filed 9–18–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3420]

Department of State Performance Review Board Members (At-Large Board)

In accordance with Section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (At-Large Board) register:

Todd F. Buchwald, Assistant Legal Advisor for Political and Military Affairs, Office of the Legal Advisor, Department of State;

Patrick R. Hayes, Executive Director, Bureau of Western Hemisphere Affairs, Department of State;

Edward J. Lacey, Deputy Assistant Secretary for Multilateral Affairs and Operations, Bureau of Verification and Compliance, Department of State;

LeRoy Lowery, III, Senior Inspector, Office of the Inspector General, Department of State;

Frank E. Moss, Executive Director, Bureau of Consular Affairs, Department of State;

Catherine Russell, Executive Director, Foreign Service Institute, Department of State; and

Brenda Saunders Sprague, Director, Office of Language Services, Bureau of Administration, Department of State.

Dated: September 12, 2000.

Marc Grossman,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 00–24033 Filed 9–18–00; 8:45 am]

BILLING CODE 4710–15–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 8, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7898.

Date Filed: September 5, 2000.

Parties: Members of the International Air Transport Association.

Subject:

PTC COMP 0676 dated 5 September 2000

Composite Resolutions
Minutes—PTC COMP 0673 and PTC COMP 0674
dated 1 September 2000
Intended effective date: 1 April 2001.
Docket Number: OST–2000–7900.
Date Filed: September 6, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC1 0157 dated 1 September 2000
Mail Vote 083—Resolutions 001aa, 041c
TC1 Special Passenger Amending Resolutions
Intended effective date: 1 October 2000.
Docket Number: OST–2000–7911.
Date Filed: September 8, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0677 dated 5 September 2000
Composite Resolutions 017h, 017i
Intended effective date: 1 April 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–24055 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience; Applications

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending September 6, 2000. 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, Conforming Applications, 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–2000–7901.

Date Filed: September 6, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 2000.

Description: Application of Air Europa Lineas Aereas, S.A.U. pursuant to 49 U.S.C. Section 41301 and Subpart Q, applies for renewal and amendment of its foreign air carrier permit to engage in charter foreign air transportation of persons and property between any point or points in Spain and any point or points in the United States.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–24056 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7919]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen, Office of National Security Plans, Maritime Administration, MAR 620, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5990 or FAX 202–488–0941.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Form Numbers: None.

Expiration Date of Approval: March 31, 2001.

Summary of Collection of Information: The collection consists of a request from the Maritime Administration (MARAD) that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Need and Use of the Information: The collected information is necessary to evaluate tanker capability and make plans for the use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Annual Responses: 20.

Annual Burden: One hour per response.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: September 12, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–23960 Filed 9–18–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535

Key to ''Reasons for Delay'':

1. Awaiting additional information

from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes:

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on September 13, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Exemption Applications		
11862–N	The BOC Group, Murray Hill, NJ	4	09/29/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	09/29/2000
12125–N	Mayo Foundation, Rochester, MN	4	09/29/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	09/29/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	09/29/2000
12158–N	Hickson Corporation, Conley, GA	4	09/29/2000
12181–N	Aristech, Pittsburgh, PA	4	09/29/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	09/29/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	10/31/2000
12281–N	ABS Group, Inc., Houston, TX	4	10/31/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	10/31/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	10/31/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	10/31/2000
12339–N	BOC Gases, Murray Hill, NJ	4	10/31/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	10/31/2000
12351–N	Nalco/Exxon Energy Chemicals, L.P., Freeport, TX	4	10/31/2000
12353–N	Monson Companies, South Portland, ME	4	10/31/2000
12355–N	Union Tank Car Company, East Chicago, IN	4	10/31/2000
12368–N	Occidental Chemical Corp., Dallas, TX	4	10/31/2000
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	10/31/2000
12392–N	Consani Engineering, Elsies River, SA	1	10/31/2000
12397–N	FMC Corporation, Philadelphia, PA	4	10/31/2000
12401–N	DG Supplies, Inc., Hamilton, NJ	4	10/31/2000
12405–N	Air Products and Chemicals, Inc., Allentown, PA	4	10/31/2000
12406–N	Occidental Chemical Corporation, Dallas, TX	4	10/31/2000
12412–N	Great Western Chemical Company, Portland, OR	4	10/31/2000
12422–N	Connecticut Yankee Atomic Power Co., East Hampton, CT	4	10/31/2000
12427–N	Chubb Fire Ltd., England	4	11/30/2000
12433–N	The Lighter Company, Inc., Miami, FL	4	11/30/2000
12434–N	Salmon Air, Salmon, ID	4	11/30/2000

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modifications to Exemptions		
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	10/31/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	10/31/2000
9847–M	FIBA Technologies, Inc., Westboro, MA	4	10/31/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	10/31/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	9/29/2000
11296–M	Heritage Transport, LLC, Indianapolis, IN	4	10/31/2000
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	10/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	10/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	10/31/2000
11769–M	Hydrite Chemical Company, Brookfield, WI	4	10/31/2000
11798–M	Air Products and Chemicals, Inc., Allentown, PA	1, 4	10/31/2000
11798–M	Anderson Development Company, Adrian, MI	4	11/30/2000
12056–M	Defense of Defense (MTMC), Falls Church, VA	4	10/31/2000
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	10/31/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	10/31/2000

[FR Doc. 00–23959 Filed 9–18–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33885]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company, and The Cincinnati, Texas and New Orleans Railway Company

Norfolk Southern Railway Company (NS) and The Cincinnati, Texas and New Orleans Railway Company (CNO&TP) [1] have agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT). The trackage rights to be acquired are described as follows: from the connection of CSXT and NS at the east leg of the wye of the NS main track at Harriman, TN (milepost 49.6D), to the turnout of milepost 50.3D/milepost 166.0H, near Devonia Street, in Harriman, to the connection with the CNO&TP main line at milepost 259.1, thence over the CNO&TP to the connection with trackage owned by the Tennessee Valley Authority (TVA), at milepost 260.8, at or near Emory Gap, TN, a distance of approximately 3.7 miles.

The transaction is scheduled to be consummated on September 13, 2000.

The primary purpose of the trackage rights is to allow CSXT to provide direct rail service for TVA of bituminous and sub-bituminous coal shipments that terminate at TVA's Kingston Fossil Plant near Emory Gap.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33885, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John W. Humes, Jr., Esq., CSX Transportation, Inc., 500 Water Street (J150), Jacksonville, FL 32292.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 11, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–23769 Filed 9–18–00; 8:45 am]
BILLING CODE 4915–00–P

[1] CNO&TP is a subsidiary of NS.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 12, 2000.

The Department of the 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 October 19, 2000 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0003.

Form Number: IRS Form 8852.

Type of Review: Extension.

Title: Currency Transaction Report by Casinos—Nevada.

Description: Nevada casinos file Form 8852 for current transactions in excess of $10,000 a day pursuant to Title 31. Form 8852 is used by criminal investigators and regulatory enforcement authorities during the course of investigations involving financial crimes. Form 8852 was created because some of the transactions reportable on Form 8362 are prohibited by Nevada State Regulation 6A.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 110.

Estimated Burden Hours Per Respondent/Recordkeeper: 19 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting/Recordkeeping Burden: 4,000,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–23966 Filed 9–18–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 11, 2000.

The Department of the 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 October 19, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0115.

Form Number: IRS Form 1099–MISC.

Type of Review: Extension.

Title: Miscellaneous Income.

Description: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sale of $5,000 or more.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,302,217.

Estimated Burden Hours Per Respondent: 16 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 21,649,027 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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–23967 Filed 9–18–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, As Amended; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled ''Debt Collection Operations System-Treasury/FMS .014,'' which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system notice was last published in its entirety in the **Federal Register** Vol. 63, page 69840 on December 17, 1998.

DATES: Comments must be received no later than October 19, 2000. The proposed system of records will be effective October 30, 2000 unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW., Room 448B, Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Management Service, Debt Management Services, (202) 874–7131.

SUPPLEMENTARY INFORMATION: The Financial Management Service (FMS) operates several programs to facilitate collection or resolution of debts owed to the Federal Government and states, including past due support being enforced by states. These programs are the Treasury Offset Program, which collects debts by offsetting or levying against Federal payments, and FMS' cross-servicing program, wherein Federal agencies refer their debts to FMS for a broad range of debt collection actions. In the operation of these debt collection programs, FMS maintains records on individuals who owe debts to the Federal Government and states, and such records are maintained in its ''Debt Collection Operations System'' system of records.

FMS is altering this system of records to: (1) Clarify the system location by listing its Hyattsville, Maryland and Homewood, Alabama offices as locations where records in the system are maintained; (2) include individuals who owe unpaid Federal taxes as individuals covered by the system; (3) indicate that the categories of records in the system may vary depending on the debt collection tools utilized by FMS to collect the debt; (4) incorporate as authorities for maintenance of the system the Taxpayer Relief Act of 1997 (Pub. L. 105–34), Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206), 26 U.S.C. 6402, and 26 U.S.C. 6331, which authorize the offset of Federal tax refund payments to collect delinquent state tax debts and the collection of Federal tax debts through the continuous levying of non-tax payments; (5) modify the retention and disposal of records to include electronic records and to correctly reference National Archives and Records Administration (NARA) regulations, Treasury directives and FMS' comprehensive record schedules; and (6) correct the name of the system manager to ''Debt Management Services.''

In addition, FMS has significantly altered its routine uses.

The language and format of the routine uses have been changed so that the categories of users and the purposes of the disclosures from this system are clearer and more understandable to the public. Also, FMS has made specific substantive changes to the routine uses to: (1) Clearly indicate that disclosures for collection of the debt may be as a result of any authorized debt collection method, and is not limited to collection authorities listed in the Debt Collection Improvement Act of 1996 (DCIA); (2) include specific language concerning disclosure for the purposes of developing, enhancing, and testing computerized systems which facilitate debt collection processes; (3) include specific language covering disclosures to joint payees on Federal payments subject to offset so that the joint payee may assert any rights he or she may have in the payment; (4) revise routine use (2); and (5) delete a routine use regarding disclosures to the Internal Revenue Service because such disclosures are already statutorily authorized as disclosures to officers and employees of the agency (Treasury) pursuant to 5 U.S.C. 552a(b)(1).

For the reasons set forth above, FMS proposes to alter system of records, ''Treasury/FMS .014—Debt Collection Operations System—Treasury/Financial Management Service.'' The revised notice is being published in its entirety below.

Dated: September 12, 2000.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/FMS .014

SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located in the offices of and with the Debt Management Services staff of the Financial Management Service, U.S. Department of the Treasury at the following locations: Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227; Prince George's Plaza, 3700 East-West Highway, Hyattsville, Maryland, 20782; and the Birmingham Debt Management Operations Center, 190 Vulcan Road, Homewood, Alabama, 35209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe debts to:

(a) The United States, through one or more of its departments and agencies; and/or

(b) States, territories and commonwealths of the United States, and the District of Columbia (hereinafter collectively referred to as ''states'').

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt records containing information about the debtor(s), the type of debt, the governmental entity to which the debt is owed, and the debt collection tools utilized to collect the debt. The records may contain identifying information, such as name(s) and taxpayer identifying number (i.e., social security number or employer identification number); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, and other amounts of money or property owed to, or collected by, the Federal Government or a state, including past

due support which is being enforced by a state.

The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date the debt originated, the amount of the delinquency or default, the date of delinquency or default, basis for the debt, amounts accrued for interest, penalties, and administrative costs, and payments on the account;

(b) Actions taken to collect or resolve the debt, such as copies of demand letters or invoices, documents or information required for the referral of accounts to collection agencies or for litigation, and collectors' notes regarding telephone or other communications related to the collection or resolution of the debt; and

(c) The referring or governmental agency that is collecting or owed the debt, such as name, telephone number, and address of the agency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub L. 89–508), as amended by the Debt Collection Act of 1982 (Pub L. 97–365, as amended); Deficit Reduction Act of 1984 (Pub L. 98–369, as amended); Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001); Taxpayer Relief Act of 1997 (Pub. L. 105–34); Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206); 26 U.S.C. 6402; 26 U.S.C. 6331; 31 U.S.C. Chapter 37 (Claims), Subchapter I (General) and Subchapter II (Claims of the U.S. Government).

PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to states, including past due support enforced by states. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, requesting repayment of the debt by telephone or in writing, offset, levy, administrative wage garnishment, referral to collection agencies or for litigation, and other collection or resolution methods authorized or required by law. The information also is maintained for the purpose of providing collection information about the debt to the agency collecting the debt, to provide statistical information on debt collection operations, and for the purpose of testing and developing enhancements to the computer systems which contain the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or implementing, a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial);

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

(i) Request for repayment by telephone or in writing;

(ii) Negotiation of voluntary repayment or compromise agreements;

(iii) Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

(iv) Referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation;

(v) Administrative and court-ordered wage garnishment;

(vi) Debt sales;

(vii) Publication of names and identities of delinquent debtors in the media or other appropriate places; and

(viii) Any other debt collection method authorized by law;

b. To conduct computerized comparisons to locate Federal payments to be made to debtors;

c. To conduct computerized comparisons to locate employers of, or obtain taxpayer identifying numbers or other information about, an individual for debt collection purposes;

d. To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, or the District of Columbia;

e. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties;

f. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset;

g. To develop, enhance and/or test database, matching, communications, or other computerized systems which facilitate debt collection processes; or

h. For any other appropriate debt collection purpose.

(5) The Department of Defense, the U.S. Postal Service, or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals receiving Federal payments (including, but not limited to, salaries, wages, and benefits), which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures;

(6) The Department of Justice for the purpose of litigation to enforce collection of a delinquent debt or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on a debt;

(7) Any individual or other entity who receives Federal payments as a joint payee with a debtor for the purpose of providing notice of, and information about, offsets from such Federal payments; and

(8) Any individual or entity:

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

(i) Administrative and court-ordered wage garnishment;

(ii) Report information to commercial credit bureaus;

(iii) Conduct asset searches;

(iv) Publish names and identities of delinquent debtors in the media or other appropriate places; or

(v) Debt sales;

b. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United

States or who owes delinquent child support that has been referred to FMS for collection by administrative offset; or

c. For any other appropriate debt collection purpose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer processible storage media, such as computer hard drives, magnetic disc, tape; in file folders; and on paper lists and forms.

RETRIEVABILITY:

Records are retrieved by various combinations of name, taxpayer identifying number (i.e., social security number or employer identification number), or debt account number.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager. Procedural and physical safeguards are utilized, such as accountability, receipt records, and specialized communications security. Access to computerized records is limited, through use of access codes, entry logs, and other internal mechanisms, to those whose official duties require access. Hard-copy records are held in steel cabinets, with access limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; files are locked up during non-working hours. The building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

Hard-copy records and electronic records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Treasury directives and FMS comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Debt Management Services, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained, Federal and state agencies to which the debt is owed, Federal employing agencies and other entities that employ the individual, Federal and state agencies issuing payments, collection agencies, locator and asset search companies, credit bureaus, Federal, state or local agencies furnishing identifying information and/or address of debtor information, or from public documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–24031 Filed 9–18–00; 8:45 am]

BILLING CODE 4810–35–P

Corrections

Federal Register

Vol. 65, No. 182

Tuesday, September 19, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–00–1430–ES; AZA–31250]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

Correction

In notice document 00–19872 beginning on page 48250 in the issue of Monday, August 7, 2000, make the following correction:

On page 48250, in the third column, in the land description, sections 14 and 24 are corrected to read as follows:

14, E½NE¼NE¼,E½NE¼SE¼; 24, E½,N½NW¼;

[FR Doc. C0–19872 Filed 9–18–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,

September 19, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 400, 401, 404, et al.

Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 400, 401, 404, 405, 406, 413, 415, 431, 433, and 435

[Docket No. FAA–1999–5535; Amdt. Nos. 400–1, 401–1, 404–1, 405–1, 406–1, 413–1, 415–1, 431–1, 433–1 and 435–1]

RIN 2120–AG71

Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends the commercial space transportation licensing regulations by establishing operational requirements for launches of reusable launch vehicles (RLVs) and the authorized conduct of commercial space reentry activities. The final rules implement the FAA's reentry licensing authority by prescribing requirements for obtaining a license to launch and reenter an RLV, to reenter a reentry vehicle, and to operate a reentry site. Issuance of licensing rules is necessary to respond to advancements in the development of commercial RLV and reentry capability. The final rules fulfill the FAA's safety mandate by limiting risk to the public from RLV and reentry operations.

DATES: Effective November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart W. Jackson, AST–100, Space Systems Development Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7903; or Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation, (202) 366–9320.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this final rule. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9–AWA–SBREFA@faa.gov.

Background

General

The Commercial Space Act of 1998 (CSA), Public Law 105–303, extends the Secretary of Transportation's licensing authority under 49 U.S.C. Subtitle IX, chapter 701 (known as the Commercial Space Launch Act or CSLA) to reentry vehicle operators and operation of reentry sites by non-Federal entities. In addition to launch of a launch vehicle and the operation of a non-Federal launch site, the Secretary licenses reentry of a reentry vehicle and the operation of a reentry site when those activities are conducted within the United States or by U.S. citizens abroad. The Secretary's licensing authority has been delegated to the Administrator of the Federal Aviation Administration (FAA) and further assigned to the Associate Administrator for Commercial Space Transportation (AST). AST carries out the Secretary's regulatory responsibilities and safety mandate under the CSLA to ensure that public health and safety and the safety of property are not jeopardized by licensed operations. AST exercises its licensing authority consistent with national security and foreign policy interests, as well as treaty obligations, of the United States.

Reentry vehicles, as defined by the recently amended CSLA, include reusable launch vehicles, or RLVs, that are designed to return from Earth orbit or outer space to Earth, substantially intact. Not all reentry vehicles are RLVs, although all of the reentry concepts currently identified to the FAA by prospective operators involve RLVs. RLV development by U.S. commercial space launch providers responds to increasing demand for lower cost and reliable access to space. Reduced cost of space access will facilitate greater commercial use of the space environment along with research and exploration that would otherwise remain unaffordable. Benefits from medical and microgravity research would be realized at potentially greater rates, and commercial services such as telecommunications and data relay would become increasingly available to the world market at lower cost. New markets in consumer services, including same day international package delivery as well as space tourism, could quickly develop with reliable reusable space vehicles.

In the mid 1990's, prospective RLV operators identified absence of adequate regulatory oversight over RLV operations, particularly their reentry, as an impediment to technology development. The need for a stable and predictable regulatory environment in which reusable launch vehicles could operate was considered critical to the ultimate ability of the emerging RLV industry to obtain the capital investment necessary for research and development and ultimately vehicle operations. Limitations on the Secretary's licensing authority and ability to adequately regulate reentry activities was identified by the House of Representatives Subcommittee on Space as early as 1992, accompanied by continuing commitment of each successive Congress to enactment of authorizing legislation addressing reentry operations. The 1998 Commercial Space Act (CSA), signed into law on October 28, 1998, provides a crucial first step in removing regulatory obstacles to RLV development. This final rule provides yet another step by establishing the framework and basis for licensing the next generation of reusable launch vehicles, as well as other types of reentry vehicles.

Another factor critical to commercial RLV development is the commitment expressed by the U.S. Government in

the CSA to share in the risks of RLV and reentry technology and to extend to operators of those vehicles the financial responsibility and risk sharing regime that has proven crucial to commercial operators of expendable launch vehicles (ELVs) in achieving a dominant share of the U.S. launch market and increasing international competitiveness. Since 1988, ELV launch providers and the U.S. Government have mutually enjoyed the substantial benefits of statutory risk allocation requirements. Through enactment of the CSA, a comparable regime would extend to RLV operators who are expected to enjoy benefits comparable to those currently enjoyed by ELV launch services providers. The Reentry Financial Responsibility final rules implement the FAA's regulatory program for assuring financial responsibility and risk allocation for licensed reentry operations, including those performed by RLVs, and remove yet another potential hindrance to RLV developers. Taken together, the comprehensive RLV and Reentry Licensing Regulations and Reentry Financial Responsibility final rules provide a stable, yet flexible, regulatory environment in which commercial RLV and reentry technology may reside. The FAA remains committed to designing air and space regulations to accommodate all of its customers, including the regulated space transportation industry, traveling public, persons on the ground, and users of air and space resources.

In furtherance of its commitment, the FAA has been working towards development of an integrated concept of operations involving the National Airspace System, or NAS, that contemplates shared use of airspace by aircraft and commercial space vehicles. In addition, the FAA has formed an integrated product team to examine issues of common heritage and concern to various FAA business sectors. Working with industry partners, the FAA plans to further evolve its regulatory approach to RLVs by defining operations and maintenance plans that assure safe, continued use of reusable space vehicles and by identifying human factors that will affect crew and passenger-bearing RLVs. Addressing those aspects of RLV operations and space flight are beyond the scope of this rulemaking. A working group of the FAA's Commercial Space Transportation Advisory Committee (COMSTAC) dedicated to RLV operational issues provides advice, information and recommendations at the request of the FAA Administrator and AST for use in support of further development of the agency's regulatory and standards development program for RLV operations.

Following enactment of the CSA, the FAA initiated this rulemaking to define and implement the licensing process, inclusive of safety standards, that would apply to authorized RLV missions (launch and reentry) and other reentry operations. For an RLV, both its launch and reentry require licensing under the amended CSLA and although the FAA has had a regulatory program in place for years governing launch licensing, the FAA determined that licensing regulations developed to address existing ELV commercial launch capability were not adequate to address the unique safety issues posed by launch vehicles that are reusable. ELVs rely upon destructive flight termination systems (FTS) that assure flight safety by destroying a vehicle traveling beyond approved limits. Timely activation of an FTS assures that vehicle debris will impact within a designated and unpopulated area so as to avoid all injury to the public. Unlike an ELV, an RLV may rely upon non-destructive means of ending vehicle flight, such as returning to the launch site or use of an alternative landing site, in the event of a vehicle malfunction or anomalous circumstance affecting the ability to conclude a mission as planned. Non-destructive means of terminating flight contemplate the ability to correct a problem and, if possible, reuse the vehicle in future flight. Although a number of factors influencing public safety are common to both ELV and RLV launches, the FAA determined it preferable to commence rulemaking dedicated to RLVs. Accordingly, on April 21, 1999, the FAA issued a notice of proposed rulemaking (NPRM) (64 FR 19626) proposing licensing requirements for the conduct of RLV missions as well as reentry of reentry vehicles that are not RLVs. In addition, on the same day, the FAA issued final launch licensing rules addressing, for the most part, launches of ELVs from Federal launch ranges (64 FR 19586, April 21, 1999).

Notice and comment rulemaking can take months, and sometimes years, to complete because of the need to consider carefully public input on an agency proposal before issuance of final rules. To accommodate those RLV developers requiring regulatory guidance before rulemaking would be completed, the FAA engaged the space transportation industry and the interested public in the development of draft interim safety guidance for RLV operators. In the absence of final rules, interim guidance would serve to inform the emerging RLV industry of safety issues identified by the FAA that would require resolution by an applicant before a license would be granted. The FAA would work closely with each applicant in constructing an application that would ensure safety issues presented by an RLV mission proposal were adequately addressed. Interim guidance has been utilized effectively and efficiently by prospective launch site operators in the absence of detailed licensing requirements.

As noted in the supplementary information portion of the NPRM, the FAA convened a meeting with industry representatives in May 1998, with participation by each RLV developer and prospective operator then known to the FAA. A spokesperson from each entity was invited to provide feedback to the FAA on the draft guidance and its effects on mission design for the purpose of refining mutual understanding of safety considerations presented by RLVs. As a result of this effort, the FAA released revised draft interim safety guidance and convened a public meeting in February 1999, to solicit oral and written comments from all interested persons on the revised guidance material. Written comments and a transcript of the meeting are available for public review in the FAA Docket Office under Docket No. 29140.

The NPRM issued on April 21, 1999 (64 FR 19626), differs in some respects from the revised draft interim safety guidance. Where safety criteria included in the draft interim safety guidance differ materially from that proposed in the NPRM, the FAA utilized comments on the draft guidance document as one means of assessing alternative approaches to achieving RLV mission safety.

In May 1999, the COMSTAC adopted a consensus-based report of the RLV working group addressing the draft interim safety guidance for RLV operators. The COMSTAC report was likewise considered by the FAA in developing the regulatory framework applicable to RLVs and is contained in the public docket under docket number 29140. It may also be obtained by accessing AST's web site, located at http://ast.faa.gov.

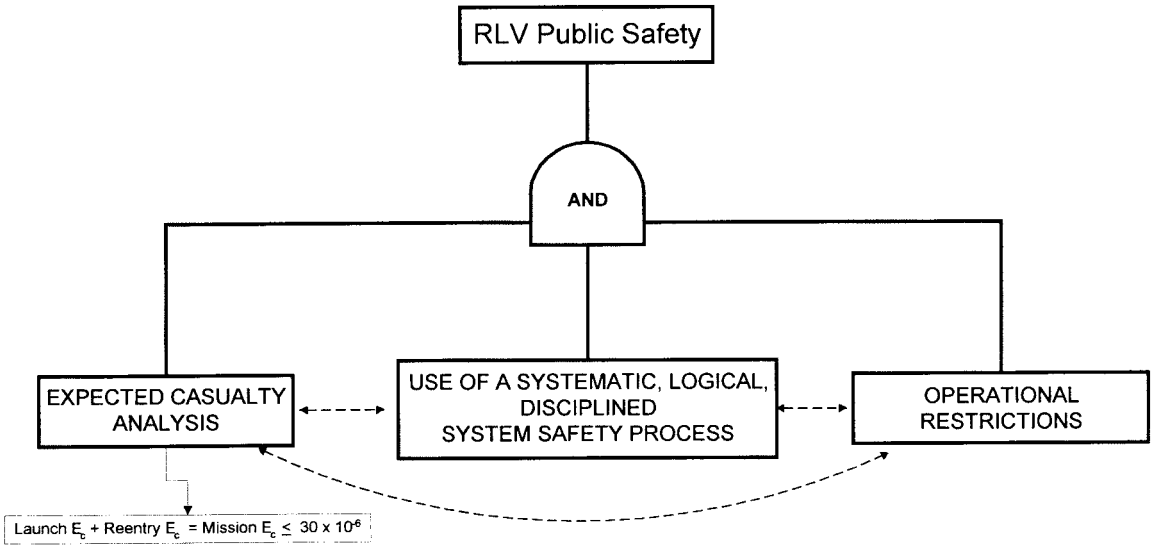
NPRM Overview: Three-Pronged Public Safety Strategy for RLV and Other Reentry Missions

The public accepts a certain amount of risk when utilizing or being exposed to various modes of transportation. For example, the traveling public accepts certain risks from air travel or when driving a car. The public is also exposed to transportation risk resulting from

aircraft flying overhead or when crossing the street. Safety regulations are intended to assure that public risk is maintained at an acceptable level. For purposes of this rulemaking, the FAA is concerned with risk posed to the public on the ground or in airspace, as well as to property on the ground or on orbit, as a result of space launch and reentry events. Passenger and crew safety standards are beyond the scope of this rulemaking.

In the NPRM, the FAA proposed a three-pronged approach, outlined below, to assure that public health and safety and the safety of property would not be jeopardized by the conduct of an RLV mission, defined to include ascent and descent flight of an RLV that has been authorized under an FAA license. Safety standards proposed by the FAA were intended to ensure that RLVs would not pose greater risk to public safety in accomplishing a flight mission than would be posed by more conventional ELV technology. Consistent application of the FAA's three-pronged approach to RLVs would mean that all RLVs would be treated similarly in terms of allowable risk to the public, with no distinction between vehicles that achieve and reenter from Earth orbit or outer space and those intended to operate suborbitally inasmuch as they never enter a closed path or complete an orbit in a closed path. Accordingly, it has not been necessary to define or delimit outer space. Consistent application to RLVs of FAA safety requirements would also ensure that launch concepts involving multi-stage vehicles, comprised of wholly or partially reusable stages, would not expose the public to greater risk than that defined as acceptable by the FAA in other commercial space transportation regulations.

The three safety-related elements reflected in the FAA's safety strategy for RLV mission and reentry vehicle licensing are: establishing limitations on the measure of acceptable public risk, use of a system safety process to identify hazards and mitigate risk and imposition of operational restrictions. These three elements are interrelated and together ensure that risks are sufficiently contained at an acceptable level. Just as system redundancy compensates for failure or flawed design or performance, interrelated safety elements assure that actual hazards from vehicle operation, whether anticipated in analytical assessments or unforeseen, will not increase risk to the public beyond an acceptable level. The following chart appeared in the NPRM to illustrate the interrelationship of the three elements of the agency's public safety strategy and is repeated in this rulemaking to reflect the FAA's final rule approach to RLV mission and reentry safety.



1. Calculation of E_c (Acceptable Public Risk)

The FAA proposed a collective risk measure, known as expected number of casualties or E_c, commonly used within the aerospace community. A collective risk calculation yields the consequences, measured in terms of human casualties, of the probability or frequency of occurrence of all events multiplied by the severity of impacts on public safety. E_c is a statistical estimation of risk used in the absence of empirical performance data.[1] Because launches are still relatively infrequent events, this probabilistic assessment is used to measure acceptable risk.

Federal ranges employ an E_c standard of 0.00003 casualties per ELV launch or $E_c \leq 30 \times 10^{-6}$. Through application of this requirement as well as other range safety requirements and practices, Federal ranges have enjoyed 40 years of ELV launch experience with no public casualty. Under 14 CFR 415.91, the FAA would issue a safety approval for a launch from a non-Federal launch site if equivalent safety is demonstrated.

The FAA proposed to apply to RLV missions and other missions involving reentry of a reentry vehicle the same risk threshold as that used by Federal launch ranges in approving ELV launches and endorsed by the National Academy of Sciences Study on Federal Ranges: $E_c \leq 30 \times 10^{-6}$. The FAA proposed to adopt a single E_c risk threshold applicable to all portions of licensed RLV flight for a particular mission. For other licensed reentries, the FAA proposed to assess reentry risk of a reentry vehicle in combination with its associated launch risk, that is, the launch that placed the reentry vehicle in space. As described in the NPRM, the FAA had also considered whether to apply E_c risk thresholds separately to each licensed flight phase of an RLV mission such that there would be an E_c allowance for launch or ascent flight

[1] To the extent it is available, empirical data on safety systems, materials and components may be used as an input in determining E_c.

and another E_c allowance for reentry or descent flight. The FAA determined that doing so would (or could depending upon the risk thresholds selected) expose the public to greater risk per mission without sufficient justification for doing so. In the FAA's view, neither the commercial objective of placing a payload in space nor scientific and technological goals of other commercial RLV ventures would justify increased jeopardy to the public as a general rule. Accordingly, the FAA proposed to apply the ELV launch risk threshold of $E_c \leq 30 \times 10^{-6}$ to RLVs on a per mission basis, and would allow an applicant for an RLV mission license to apportion or allocate flight risk among flight phases without regulatory direction from the FAA. An advisory circular, AC No. 431.35–1, provides guidance on an acceptable means of calculating the E_c that would result from debris dispersion upon explosion or other vehicle break-up and is available from the FAA.

2. System Safety Process and Risk Analysis

A system safety process relies upon methods and techniques for identifying: (i) Hazards that result from vehicle operation, (ii) effects on or consequences to public safety as a result of identified hazards, (iii) means of controlling or mitigating effects on or consequences to public safety, and (iv) means of verifying the effectiveness of risk mitigation measures. A system safety process and calculation of expected casualties are interrelated because the former is used to determine potential failure events, the probabilities of failures, and to estimate consequences of those failures, all of which affect the expected casualty rate.

The system safety process is used to define the operating envelope that ensures a proposed mission will remain within the acceptable risk threshold and also to define operating rules and constraints for remaining within that envelope. The FAA maintains guidance material describing an acceptable system safety process; however, an applicant may employ another process as long as it accomplishes the intended purpose. Examples of acceptable failure identification techniques are identified in the NPRM and include: Preliminary Hazards Analysis, Failure Mode and Effect Analysis, and Fault Tree Analysis Methodology for Hazard Assessment.

3. Operational Restrictions

Commercially operated RLVs will pose technological challenges and unique safety issues to the government and industry. Other than the partially reusable Space Transportation System (STS), of which the Shuttle is the best known and reusable part, there is no vehicle known to the FAA currently capable of entering Earth orbit and returning, substantially intact, to Earth. Once commercial RLVs are fully designed and ''metal is bent,'' operational concepts may undergo significant ground testing and some may undergo incremental and experimental flight testing in controlled airspace and possibly the upper atmosphere. However, absent any real world launch and reentry experience with the emerging generation of reusable launch vehicles, and until sufficient experience is gained, system data recorded and performance verified, the analytical processes that comprise system safety and that generate the calculation of E_c do not provide a sufficient basis to conclude that public risk is sufficiently contained and mitigated. Given uncertainties of performance, the FAA proposed to impose operating restrictions on RLV flight and other reentry missions pending proof of reliability and system performance, either through operational use or conduct of a flight test program.

Operating restrictions are intended to limit the consequences of a failure where vehicle reliability cannot be ascertained with a sufficient level of confidence. Risk is a function of the probability of a failure and the magnitude of its consequences. Where the probability of a failure cannot be accurately determined but merely assumed using engineering judgment and analytical techniques, risk is appropriately managed by limiting consequences. Hazard analysis and other quantitative risk analyses are extremely important to vehicle design and operating concepts; however, absent real time flight performance data the FAA cannot rely exclusively on analytical constructs when public safety is at stake. Moreover, thousands of hours of flight data may be required to prove system reliability, particularly when the effects of the space environment and launch stress on continued use through re-flight of a reusable vehicle are not yet fully identified and understood. In this regard, the FAA notes that industry representatives have acknowledged that the STS is still undergoing a flight test program. Accordingly, the FAA proposed in the NPRM to impose operational restrictions based on probable system failures and to require adherence to those restrictions for all RLVs. Some additional restrictions would apply to vehicles that remain unproven, at least until such time as sufficient vehicle performance data is obtained to justify relief from restrictions.

The NPRM highlighted four categories of operational restrictions applicable to RLV flight and reentry of a reentry vehicle other than an RLV, as follows: (i) Restricting flight over populated areas; (ii) requirements for monitoring critical systems; (iii) positive enabling of fail-safe reentry; and (iv) use of a sufficiently large reentry site as to contain the vehicle upon landing. Each of these restrictions is discussed in greater detail below.

Proposed Scope of RLV Mission and Reentry Licensing

Although the FAA proposed to incorporate both launch and reentry authorizations in a single license that would authorize an RLV mission, it remains necessary to differentiate between activities that are licensed by the FAA and those that are not covered by FAA licensing authority. Delimiting the extent of licensed activity is particularly important because activities that are not licensed by the FAA would not be covered by the statutory financial responsibility and risk allocation regime and liability risks resulting from those activities must be managed privately as a matter of business judgment rather than Federal regulation.

Definitions of the terms ''launch'' and ''reentry'' are proposed and discussed in the RLV and Reentry Licensing Regulations NPRM; however, as signaled in the NPRM, the notice of proposed rulemaking, 64 FR 54448–54472, issued October 6, 1999, concerning reentry financial responsibility addresses in greater detail the scope of launch and reentry authorizations that would be contained in an RLV mission license because of the direct relationship between the scope of licensed RLV activity and applicability of risk sharing devices, including indemnification, under the CSLA. Accordingly, although some comments submitted to the NPRM docket addressed the appropriate scope of launch and reentry licensing, more extensive discussion and analysis of this issue appears in comments submitted in response to the Reentry Financial Responsibility NPRM. Final rules governing reentry financial responsibility are likewise accompanied by more extensive analysis and discussion by the FAA of the appropriate extent of FAA licensing authority over RLV missions and the interested public is referred to the rulemaking governing financial responsibility for licensed reentry

activities for a more comprehensive treatment of the issue.

The NPRM described the need to define the extent of FAA launch licensing authority over launch of an RLV differently from that used to define launch of an ELV. Launch licenses for ELV launches authorize activities beginning upon arrival of a launch vehicle (or a major component) at a U.S. launch site and ending, for purposes of ground operations, once the launch vehicle leaves the ground. In terms of flight activity, launch ends at the point after payload separation when the last action of control over the launch vehicle is exercised by the licensee. For liquid fueled vehicle stages, the last action of control is typically exercised when the vehicle's upper stage is rendered inert or safe from explosive risk. For a solid rocket motor, that point may occur when upper stage fuel is exhausted or the stage is otherwise rendered inert.

The FAA proposed no change with respect to commencement of licensed launch of an RLV from that of an ELV because pre-flight hazards expose the public to risk and must be regulated regardless of the one-time use or reusable nature of the vehicle. However, the FAA pointed out that defining the end of a licensed launch based upon the last act of control over the vehicle would not be appropriate for an RLV because doing so would suggest that launch continues through vehicle reentry and landing. This is an illogical result, in the FAA's view, in light of congressional direction that reentry of an RLV is subject to, and in fact requires, reentry licensing by the agency. Instead, the FAA proposed to use payload deployment as the point at which launch concludes for those RLVs having that as their mission. At the time the NPRM was issued, the FAA considered that in defining the end of launch in this manner it was addressing the vast majority of RLV concepts and launch missions under consideration. Market projections in support of RLV development focused on deployment and replenishment of satellite constellations, chiefly in low Earth orbit. Although this distinction was discussed in the Supplementary Information portion of the NPRM, the proposed definition of the term ''launch'' that appears in the regulatory text failed, due to an oversight, to include this regulatory distinction between ELV and RLV launches.

Reentry licensing, as proposed in the NPRM, would commence upon initiation of operations necessary to assure reentry readiness and safety, that are uniquely associated with reentry and that are critical to ensuring public health and safety and the safety of property during reentry. The NPRM addressed the absence of licensing authority over on orbit operation of an RLV but noted that most of the RLV concepts briefed by developers to the FAA would deploy a payload and spend minimal time on orbit in order to minimize risk to the vehicle and to take advantage of rapid turnaround for the next mission. Therefore, for most RLVs under development or contemplation, there would be minimal, or no, on-orbit activity not subject to FAA licensing.

Under the proposed mission approach to RLV licensing, only vehicle flight would be evaluated against the mission risk criterion of $E_c \leq 30 \times 10^{-6}$. Licensed ground operations preceding ascent flight and following reentry landing would not be factored into the E_c analysis. Unlicensed on-orbit operations also would not enter into the equation.

The FAA proposed an application process and structure similar to that traditionally applied to requests for ELV launch licenses, and the section-by-section analysis of the proposed regulatory text explains the purpose and content of each of the reviews performed by the FAA before a license may be issued. Policy and safety reviews and approvals are necessary elements of RLV mission licensing, as well as the satisfactory completion of any required payload review. A payload review may be required for launch and also for reentry of a payload. An environmental review of the impacts associated with proposed operation of an RLV, including activities to be performed at a planned reentry site, is also an element of RLV mission licensing and requirements for conducting the review are described in the NPRM. Where the reentry vehicle is not an RLV, the same kinds of reviews would be required to support a reentry licensing determination; however, the information required of the applicant would be limited to that pertaining to the reentry or descent flight. Rather than reiterating all of the application requirements applicable to reentry flight, the NPRM proposed a new part limited to reentry of a reentry vehicle that is not an RLV. That part refers an applicant for reentry licensing to reentry-related elements of RLV mission licensing requirements and contains additional regulatory requirements that are unique to reentry vehicles other than RLVs.

Public Response to Three-Pronged Public Safety Strategy for RLV and Reentry Safety

Twenty entities submitted comments to the docket during the 90-day comment period provided by the FAA. Comments were submitted chiefly by developers of RLVs and entities involved in technology development intended for use in reentry concepts. In general, the comments commended the FAA for swift issuance of a clear, yet flexible, regulatory framework in response to a statutory mandate and the growing need for a predictable licensing regime for RLVs.

A number of observations or general themes can be discerned from the comments. Among them is the sense of some RLV developers that the FAA adheres too closely to ELV-based regulations in its proposed approach to mission safety and that aircraft regulation, including the FAA's certification authority, provides a better model for RLVs. This view was espoused by developers of passenger-bearing concepts, in particular. Some suggest commencing FAA licensing of flight test operations under an experimental certification, use of a transport category certification having design criteria and flight test standards for passenger and cargo bearing vehicles, and the equivalent of flightworthiness certification once design reliability has been established. Several comments pointed out the need to begin addressing, through regulations, safety criteria for RLVs that will transport passengers in addition to a payload or cargo and the need for operations and maintenance (O&M) standards that will facilitate re-flight approval. The FAA has already begun examining human factors in space, as previously noted, and is engaged with the RLV working group of the COMSTAC on O&M considerations that may facilitate future rulemaking on these important matters.

Where an RLV incorporates aircraft technology, some comments recommend use of existing Federal Aviation Regulations codified at 14 CFR parts 1–198, either exclusively during subsonic or low supersonic flight, or in combination with FAA licensing under the CSLA. Although the FAA does not intend to impose certification requirements on RLVs for a number of reasons, the agency agrees that aircraft certification may play a role in approving certain vehicle systems for launch. For example, although it is an ELV, the Pegasus launch system which is subject to 14 CFR 1–198 certification requirements contained in the Federal Aviation Regulations referenced above governing operation of the L–1011 aircraft, and FAA licensing of flight operations commencing upon take-off of the L–1011, in accordance with the Commercial Space Transportation

Regulations, 14 CFR Ch. III, illustrates how the two regulatory programs may be combined to assure public safety.

Certification suggests design approval based on compliance with standards developed after years of flight history and experience. Given that RLVs are still in conceptual and developmental stages, the FAA considers it premature to impose standards other than those necessary to protect the safety of persons and property on the ground, in airspace or on orbit. With additional knowledge of RLV technology, the FAA may utilize newly granted authority to issue safety approvals for vehicles or safety systems in order to gain the economic benefits and efficiencies of standardizing approvals. A safety approval would signify that a vehicle, when operated within a defined envelope, may be operated in a manner that does not expose the public to unreasonable risk. However, unique characteristics of a mission, such as the proposed launch site, reentry site and trajectories for each flight phase, would have to be examined for impacts on public safety resulting from vehicle flight. The FAA anticipates that several years of experience in licensing RLV missions would be required before it is prepared to issue proposed safety approval standards.

Kistler Aerospace Corporation (Kistler) commented that licensing requirements proposed in the NPRM may be used as a regulatory framework from which the FAA and the applicant would, in essence, negotiate a licensing plan consisting of requirements tailored to the applicant's proposed operations. Documentation, analyses, methodologies and tests, along with a schedule, would be agreed upon by the applicant and the agency, leaving the applicant free to propose an assessment methodology and criteria. This licensing arrangement was identified in the COMSTAC Report on RLVs. Although the FAA does not embrace the notion of binding license negotiation, *per se*, the agency intends to engage in pre-application consultation with license applicants to accomplish a number of the objectives outlined in Kistler's proposal. For example, elements of a license application would be identified during pre-application consultation to address the unique aspects of a proposed RLV or reentry mission.

The FAA agrees in principle with Space Access's comments suggesting use of an incremental licensing approval plan whereby the FAA would approve or provide formal feedback to an applicant on its submissions. Pre-application consultation is designed to accomplish the objectives outlined in Space Access's comments. It also provides an applicant early indication as to whether a proposed mission is eligible for licensing or poses unreasonable risk that may never be sufficiently mitigated as to warrant safety approval. As detailed more extensively in the section-by-section analysis, a number of different approvals comprise a licensing determination by the FAA, and these may be requested by an applicant in any order. In this manner, an applicant may obtain early indication from the FAA as to whether obstacles to a favorable licensing determination exist because of national security or foreign policy interests of the U.S. Government, safety concerns, or environmental considerations.

In addition, the licensing approach outlined in the NPRM and codified in this final rule would allow an applicant to utilize a methodology of the applicant's choosing as long as it satisfies the performance goals stated in the rule. For example, an acceptable system safety process is one that identifies and assesses the probability and consequences of reasonably foreseeable hazardous events and safety-critical system failures during a mission. The FAA has issued an advisory circular illustrating an acceptable system safety process in addition to an advisory circular on expected casualty calculation. Advisory circulars are available from the FAA and, where applicable to activities licensed under the CSLA, may be obtained by accessing the AST web site at http://ast.faa.gov. An applicant could follow the advisory circular guidance or propose another equivalent methodology. One comment applauded the use of advisory circulars in RLV mission licensing and the flexibility it affords an applicant. Another suggested that the FAA continue to refine them.

Taken together, these elements of the FAA's licensing program afford an applicant great flexibility in seeking a license and optimize opportunities for fashioning an acceptable application.

One comment not incorporated by the FAA in this final rule would *require* the FAA to license an RLV mission *unless* the FAA could document reasons to believe the reentry would be unsafe. Shifting the burden in this manner would reduce costs and paperwork burdens for an applicant, as the comment points out. Nevertheless, the FAA maintains that the burden of demonstrating safe operating capability remains on the applicant and makes no change in its licensing procedure on the basis of the comment.

The aircraft analogy previously discussed regarding the L–1011 aircraft used as part of the Pegasus launch system informs comments objecting to FAA's proposed flight phase approach to licensing an RLV mission whereby the FAA would assess ascent and descent flight risk without regulation of on-orbit activity. Vela Technology Development, Inc. (Vela) plans a passenger-bearing vehicle and objected to the FAA's proposed licensing approach. Vela stated that licensing launch and reentry is akin to licensing take-off and landing of an aircraft without regard to en route flight operations. According to Vela, this philosophy is an inappropriate hold-over from ELV-based regulations and that only entry into and operations within controlled airspace require FAA licensing.

Unlike the statutory authority over aircraft granted to the FAA, the CSLA limits FAA licensing jurisdiction to the launch of a launch vehicle and reentry of a reentry vehicle. For this reason, the FAA is unable to abandon the flight phase approach to calculating and regulating mission risk. The FAA's flight phase approach to assessing mission risk is explained in greater detail below. Also summarized in this supplementary information under the heading, ''Scope of RLV Mission and Reentry Licensing Under the Final Rule,'' is the legal basis upon which the FAA has determined that it does not license all RLV operations, wherever conducted.

Vela further commented that only an unpredictable or uncontrolled reentry poses a risk to public safety requiring safety regulation and yet Vela understands that ELV ''reentry'' is not subject to FAA licensing. The FAA agrees with Vela's comments that suggest an uncontrolled reentry poses certain risk to public safety; however, unless an object has been designed to survive reentry in substantially intact condition, risks to public safety should be non-significant if not negligible and its reentry need not be regulated.[2] For this reason, the FAA's licensing jurisdiction is limited to reentry of a reentry vehicle. ''Reentry,'' as defined by the CSLA, means to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit

[2] As noted in the NPRM, risk to public safety from a reentry that is essentially random or otherwise non-nominal would be assessed as part of the licensing process and an applicant would have to demonstrte that reentry will not exceed aceptable risk criteria for the mission. Assessing the risk of non-nominal reentry using mission risk criteria avoids the need for a regulatory requirement that an operator incapacitate its vehicle in the event of an abort to orbit situation. (*See* 46 FR 19639).

or from outer space to Earth. 49 U.S.C. 70102(12). A ''reentry vehicle'' means a vehicle designed to return from Earth orbit or outer space to Earth, or an RLV likewise designed to return, substantially intact. 49 U.S.C. 70102(13). In other words, when survivability by design is combined with the purposeful act of reentry, risks to public safety rise to a sufficient level as to warrant regulatory oversight. Most debris is expected to burn up due to heating caused by movement through the atmosphere during descent; however, on occasion, pieces of debris such as the Delta II second stage may survive in deteriorated condition and land on Earth. Although the return to Earth of vehicle debris is not a licensable event under the CSLA, the FAA does consider vehicle staging impacts as part of the mission review for a launch license and their associated risks in assessing financial responsibility requirements when licensing a launch involving vehicle stages that may impact populated areas during a nominal launch or in the event of catastrophic failure and vehicle break-up.

The Experimental Rocket Propulsion Society (ERPS) commented that licensing should be based on vehicle design, not operator intent, so that a vehicle designed to reenter substantially intact would require reentry licensing by the FAA whether or not its operator intended it to reenter. Doing so would avoid potential abuse by vehicle operators, according to ERPS. Presumably, this abuse would be failure to obtain a reentry license claiming lack of intent to reenter. For reasons related to concerns cited by ERPS, the FAA noted in the notice of proposed rulemaking governing financial responsibility requirements for licensed reentry activities that the term ''purposefully'' in the statutory definition of ''reentry'' would not necessarily exclude a premature reentry or suborbital activities from reentry licensing coverage merely because reentry occurs through physical forces or ballistically. Designed-in capability and intent to reenter would subject an operator to reentry licensing as long as other statutory thresholds triggering FAA licensing authority are met. (*See* ''Financial Responsibility Requirements for Licensed Reentry Activities;'' October 6, 1999, 64 FR 54448–54472, at p. 54454, n.8.)

1. Comments on Mission Risk and E_c Calculation

The NPRM proposed a single, per mission risk criterion of $E_c \leq 30 \times 10^{-6}$ for an RLV mission. The combined risk of RLV flight covered by a license for a single mission, both ascent and descent, would have to satisfy this criterion in order for the FAA to issue a favorable safety approval, a necessary ingredient for an RLV mission license. A general explanation of how casualty expectation is formulated is provided in the NPRM at 64 FR 19634, and an FAA Advisory Circular, AC No. 431.35–1, offers guidance on an acceptable methodology for calculating the expected number of casualties. Although the methodology addresses debris dispersion and its contribution to expected casualty estimation, the NPRM notes that the casualty area of a vehicle used in calculating E_c must also account for casualties related to secondary explosions, hazardous material exposure such as toxic substances, and lateral debris movement following impact.

Under the final rule, acceptable per mission risk for an RLV launch and reentry may not exceed 30 in a million missions or .00003 casualties per mission. The FAA adopts the Federal range standard applied to ELV launches on a per launch basis to ensure risk to the public is maintained at an acceptable level and not increased by virtue of a vehicle's return flight capability. Although licensed activity includes pre-flight ground operations and reentry-readiness operations conducted in space before vehicle descent, only ascent and descent flight during which an instantaneous impact point, or instantaneous impact point (IIP) debris footprint, exists on Earth is considered in calculating expected casualty.[3] Pre-flight hazards and operations conducted on orbit, whether or not subject to FAA licensing, would not contribute to the expected casualty calculation.

Several comments endorsed use of expected casualty in assessing mission risk and the FAA's determination not to allocate, or define, the total risk ''budget,'' applicable to each flight phase. United Space Alliance (USA) disagreed with imposition of a single risk criterion on all RLV mission flights particularly when launch and reentry events are separated by an extended length of time. TGV Rockets, Inc. (TGV) argued that use of the single E_c criterion of .00003 for an RLV mission is too stringent and urged application of an E_c limit of .00003 for launch and another E_c limit of .00003 for reentry.

Kistler opposed use of a casualty expectation criterion stating that it is unjustifiable, too subjective, and would stifle innovation. Instead, Kistler urged the FAA to utilize a more system-oriented approach to RLV licensing focused more upon hardware and engineering. That said, Kistler suggested that a combined risk assessment criterion may be justified for a suborbital RLV because, once created, the instantaneous impact point (IIP) of the vehicle exists continuously, whereas for reentry from orbit, an IIP exists during launch, ceases upon achieving orbit, and is recreated during reentry flight. In support of its position, Kistler notes that attaining orbit suggests that launch resulted in zero risk exposure to the public. Hence, combining launch and reentry risk is a mathematical abstract with no bearing on public safety, according to Kistler. Lang Engineering, Regulatory and Program Support (Lang) stated that casualty expectation should be used as a guiding principle for now but that the FAA should explore use of accepted practices and empirical data that can be used to support a safety demonstration as the regulatory program for RLVs evolves.

The FAA disagrees with Kistler and has determined to retain use of casualty expectation, determined in advance of the conduct of a mission, as a means of limiting RLV mission risk to public safety to an acceptable level. The level of acceptable risk, defined as not exceeding 30 casualties in a million missions or .00003 casualties per mission, has been successful in preserving public safety as evidenced by Federal range history. The final rules do not allocate a risk quota for RLV flight phases but allows an applicant maximum flexibility to design an RLV and operational plan that satisfies the single risk criterion for mission flight. Limiting mission risk, in combination with other elements of the FAA's safety strategy, will foster confidence in RLV operations among the general public as well as ensure that licensing determinations are made in a manner that is consistent with the paramount public safety concerns of the agency.

2. Comments on System Safety Process and Risk Analysis

In the NPRM, the FAA invited public comment on proposed use of a system safety process and risk analysis as part of the FAA's overall public safety strategy for RLV and reentry vehicle licensing. No opposition to use of a system safety process appears in the

[3] Existence of an IIP creates risk to public safety inasmuch as it reflects the projected impact point on the surface of the Earth where the vehicle or vehicle debris would land in the event the vehicle fails or breaks up. Generally, the IIP is located ahead of the vehicle because momentum and atmospheric forces cause the vehicle to impact in a downrange location rather than directly underneath the vehicle at the moment of failure or break-up.

comments and some affirmatively endorse its benefits. A number of comments expressed appreciation for the flexible approach to system safety outlined in the NPRM and use of an advisory circular to provide guidance on an acceptable methodology. Consistent with remarks made by Kistler at the February 11, 1999 public meeting, the FAA would not require all of the studies listed in the draft interim safety guidance as examples of system safety analyses but would allow industry flexibility to select a system safety process appropriate for its vehicle and concept of operations.

Kelly Space & Technology, Inc. (Kelly) commented that the documentation used for vehicle development should be used to support the system safety process to the maximum extent possible to reduce costs and burdens on the applicant. The FAA agrees and notes that use of a system safety process much like that embodied in 14 CFR 25.1309 for aircraft should not impose an additional regulatory burden on an applicant because it is substantially similar to the engineering analysis a vehicle developer would utilize in assessing vehicle performance for its own developmental purposes.

Kistler and Applied Science & Technology, Inc. (ASTi) objected to a statement in the NPRM Supplementary Information to the effect that a conservative risk assessment is appropriate for a vehicle lacking an adequate flight history and therefore risk analysis must assume one hundred percent probability of failure. Kistler commented that the FAA should define adequacy of flight history based upon experience gained within the system's design envelope, as opposed to statistical analysis of launch history, such that a system that demonstrates integrity in some acceptable portion of its design envelope would qualify as having an adequate flight history.

The FAA responds to Kistler's and ASTi's comments in two parts. First, the FAA does not mandate, without provision for relief from the requirement, that risk analysis assume a one hundred percent probability of a catastrophic failure. Under an alternative noted in the NPRM, an applicant could prepare a detailed risk analysis using traditional system safety methodologies as described in the system safety process advisory circular. Acceptable risk assessment techniques for determining failure conditions include Preliminary Hazards Analysis, Failure Mode and Effect Analysis, Event Tree Analysis, and Fault Tree Analysis Methodology for Hazard Assessment. Methodologies such as those listed here include failure modes and probability rates affecting risk to public safety and safety of property without necessarily assuming a one hundred percent failure rate. Under this regulation, an applicant may select any system safety analysis methodology that assesses the probability and consequences of reasonably foreseeable hazardous events and safety-critical system failures that could cause a casualty to the public. It is therefore not a requirement that an applicant's risk analysis assume the probability of a catastrophic failure of 1.0 for purposes of the hazard identification and risk assessment required under the final rule, § 431.35(c). Rather, probabilistic tools may be utilized by an applicant as long as they address nominal and non-nominal vehicle operation during flight. Second, with regard to adequacy of flight history, the FAA is not prepared to define in this regulation the criteria by which a vehicle may be deemed ''proven'' as opposed to ''unproven.'' [4] However, the FAA will accept a record of past performance of a safety system under comparable operating circumstances as an indication of reliability and will accept the use of historical reliability data in an applicant's risk assessment.

3. Comments on Operational Restrictions for RLV and Other Reentry Missions

Operational restrictions, particularly those imposed on vehicles without a proven flight safety record, proved to be the most controversial aspect of this rulemaking. ACTA, Inc. (ACTA) commented that the FAA should expect opposition to proposed requirements from the RLV industry because they are inconsistent with RLV operational concepts. The Rotary Rocket Company (Rotary Rocket) stated that the proposed operational restrictions have no factual or analytical basis and are therefore arbitrary. According to Rotary Rocket, vehicle reliability and satisfaction of the expected casualty criterion for a mission are sufficient to limit public risk. Rotary Rocket further stated that the proposed operational restrictions will distort operating concepts and are detrimental to the RLV industry.

Comments on each of the four categories of operational restrictions are summarized and addressed below.

A. Restricting Flight Over Populated Areas.

Proposed restrictions, but not a ban, on population overflight would apply to all RLV missions and reentries; however, additional restrictions were proposed for unproven vehicles. In the NPRM, the FAA proposed that for *any* RLV mission or reentry, the projected IIP of the vehicle shall not have substantial dwell time over densely populated areas during flight. Seven comments objected to the restriction on any RLV or reentry that the IIP of the vehicle must not have substantial dwell time over a densely populated area. Some comments expressed concern that, unless defined more specifically, the terms ''substantial'' and ''densely'' remain vague and ambiguous and will complicate mission planning for operators. Others objected on the basis that this additional requirement is overly restrictive and that remaining within the permissible limits of the expected casualty threshold should be the sole criterion by which the FAA would allow or disallow population overflight because the criterion takes into consideration population density, casualty area and probability of failure. One comment noted that the proposed regulation would place more value on the lives of persons living in densely populated areas since overflight of such areas is limited, whereas overflight of merely populated areas is not so limited. Another comment stated that the FAA should dispense with the restriction arguing that an adequate flight history is sufficient to allow such overflight as long as the vehicle will remain within its demonstrated flight envelope.

For the following reason, in this final rule as in the NPRM, the FAA declines to define the terms in issue using quantitative measures opting instead to apply a qualitative measure on a case-by-case basis. In response to the comments regarding the projected IIP associated with substantial dwell time over densely populated areas, the FAA believes that substantial dwell time applies in a cumulative manner, such that multiple instances of dense population overflight of the IIP during a mission could amount to substantial dwell time. Substantial dwell time is a relative term when applied as a qualitative measure because the consequences of failure early in flight when the IIP passes slowly over a densely populated area are far greater than the consequences would be later in flight just before the vehicle attains orbital velocity. It is the consequences of failure that prompts the FAA to

[4] A distinction between ''unproven'' RLVs and all others appears in regulatory text governing operational restrictions.

forbid substantial dwell time of the IIP over a densely populated area.[5] When failure consequences may be too great to be tolerated then population overflight would be barred. The approach utilized by the FAA in the NPRM and retained in the final rule regarding population overflight by any vehicle resembles that applied to ELV launches from Federal ranges. The IIP of ELVs launched from Cape Canaveral Air Force Station may, for example, fly over portions of Africa for a few seconds. Some population overflight is tolerated in such circumstances because it contributes little to the expected casualty calculation. It is perhaps with that in mind that some comments advocated that the E_c criterion alone should be sufficient to safeguard public safety interests. However, unlike ELVs, RLV trajectories may cover inland areas where population centers may be affected early in flight. For this reason, the FAA considers it necessary to make explicit in the regulations a restriction against dense population overflight when the consequences of failure, regardless of how remote the risk of its occurrence, would be intolerably severe.

The FAA further notes that, unlike aircraft, there is no operational experience with commercial RLVs or reentry vehicles on which to assess actual risk from population overflight of a vehicle's IIP. With experience in RLV regulation and operation, the FAA anticipates that it may re-examine the need for an absolute restriction of this nature.

Restrictions proposed in the NPRM in §§ 431.43(d)(1) and (2) on the planned flight trajectory of an unproven vehicle proved even more controversial than those affecting all RLV and reentry vehicle flight. Under the first alternative, flight operations would be limited such that IIP of the vehicle does not have substantial dwell time over a populated area. Under the second alternative, some population overflight would be tolerated as long as the expected average number of casualties to the public would not exceed $30 \times 10–^{-6}$ assuming a vehicle failure at any time the IIP is over a populated area.

The two alternatives are not mutually exclusive. The FAA clarifies in this final rule that in planning a mission an applicant may plan a trajectory that satisfies one restriction during some portion of flight and the other restriction during other portions of flight. Applied in combination, operational restrictions for unproven vehicles will not preclude vehicles from utilizing inland launch and reentry sites as long as the vehicle flight trajectory is carefully planned and controlled to comply with rule requirements.

One commenter asked for clarification as to whether the term ''IIP'' used in this context refers to an intact vehicle or the debris pattern that would result from vehicle breakup. The FAA intends the term ''IIP'' to refer to the debris footprint of the vehicle, or casualty area, inclusive of the debris dispersion pattern that would result, depending on the catastrophic failure mode.

In addition to comments seeking more precise definition of the term ''substantial'' dwell time or proposing quantitative measures, some comments noted that a restriction of this nature unfairly burdens RLVs in favor of ELV technology because unproven ELVs are not held to comparable restrictions. The FAA disagrees. Restrictions on unproven RLVs were developed to ensure that operators of unproven RLVs are granted similar latitude to that afforded ELV operators. ELVs typically are not operated such that there exists substantial dwell time of a vehicle's IIP over any populated area.

As with proven vehicles, the term ''substantial'' is applied on a case-by-case basis using a qualitative approach to risk assessment. Expected casualty is a function of the probability of a failure event and its consequences. If both the probability of failure and the consequences of vehicle failure are high, then it is reasonable to envision a high expected casualty rate. By reducing either the probability of failure or the consequences of failure, the resulting expected casualty determination is lowered. Because unproven vehicles have an unknown or uncertain failure rate, the FAA considers it reasonable to ensure that risk is most effectively mitigated by controlling the consequences of a failure. The FAA does so by limiting opportunities for high consequence events and therefore retains flexibility to determine on a case-by-case basis whether dwell time over a populated area is too significant to allow because the consequences of a failure would be unacceptably high.

Alternatively, an applicant may assume a vehicle failure while the IIP is over a populated area and obtain approval for flight as long as the E_c threshold of $30 \times 10–6$ is not exceeded. Rotary Rocket commented that it would be impossible to design a flight trajectory that would satisfy this criterion. In addition, Rotary Rocket protested in its comment that a regulatory authority could conjure up failure scenarios that, in combination, would make it impossible to fly over any populated area. Lockheed Martin Corporation (Lockheed Martin) suggested replacing the absolute probability of failure with a 1/250 probability of failure for RLVs that are substantially aircraft-like.

In contrast, ERPS suggests that the proposed criterion be used during all phases of flight because the allowable population density under the IIP is inversely proportional to the casualty area of the vehicle and the result would be that no RLV would be allowed to fly over a large population center.

The FAA disagrees with comments suggesting that unproven ELVs are unfairly subject to more lenient regulations than tolerated under this rule. As described above, the IIP of ELVs, proven and unproven, are allowed over some populated areas late in flight when the probability of failure and its consequences are relatively low.

The FAA also disagrees with those comments opposed to proposed operational restrictions on unproven vehicles that argue that the restrictions could only be satisfied by the smallest of vehicles launching from coastal sites and reentering to coastal areas. With the restrictions on population overflight by the IIP of an unproven vehicle, an applicant would be able to plan a flight path that allows for overflight of a sparsely populated area early in flight when vehicle failure would not exceed the allowable expected casualty criterion of 30×10^{-6} and overflight of a populated area for a brief period later in flight when the contribution to E_c of failure consequences during that stage of flight are sufficiently small such that the mission E_c does not exceed the mission risk criterion of $E_c \leq 30 \times 10^{-6}$. Also, as pointed out by Space Access, upon firing of retrorockets to deorbit an RLV, the vehicle's IIP is expected to pass rapidly over about half the circumference of the Earth, perhaps passing over populated areas for mere seconds. Population overflight under such circumstances is not likely to contribute significantly to the E_c calculation and is not necessarily prohibited under the final rule.

Unproven vehicles may fail for any number of reasons and aircraft history suggests that some failure-causing events may be unforeseen or unpredicted during risk analysis. Therefore, the FAA determines it prudent to apply conservative

[5] Similarly, § 91.319(c) of the Federal Aviation Regulations provides that unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft under an experimental certificate over a densely populated area or in a congested airway. Generally speaking a minimum of 1,000 hours of flight testing would be performed before the FAA would issue a type certification for new aircraft and remove flight restrictions.

operational limits on unproven vehicles in order to limit risk to public safety.

For these reasons, the FAA retains the operational restrictions pertaining to population overflight of the IIP of an unproven vehicle in the final rule with the clarification offered above regarding the combined applicability of the two restrictions. An applicant need not limit itself to one or the other operational restriction for the duration of an RLV or reentry mission. An applicant may plan a flight trajectory for the mission that utilizes both restrictions as long as allowable mission risk ($E_c < 30 \times 10^{-6}$) is not exceeded.

B. Monitoring Critical Systems.

Under the proposed rules, an operator would be required to monitor and verify the status of launch and reentry safety-critical systems both before and during launch flight as well as before initiating reentry flight, and must maintain procedures for doing so. Because the FAA also proposed that reentry flight from orbit could not be initiated without issuance of a command enabling the vehicle's descent to Earth, the ability to monitor safety-critical systems before initiating reentry flight is a necessary component of the FAA's public safety strategy. Monitoring capability would ensure that both launch and reentry flight would be initiated only under nominal conditions or under non-nominal conditions assessed in accordance with the licensee's system safety process and demonstrated to be within acceptable risk criteria. The proposed rules would not require real-time monitoring of data used for other purposes, such as system validation, system reuse or post-flight anomaly investigation. Under the NPRM, an applicant for an RLV mission license would be required to submit procedures for monitoring and verifying the status of safety-critical systems immediately before and during mission operations.

At the February 11, 1999 public meeting, concerns were raised that requiring real-time data may be cost prohibitive or impossible to obtain. In response to industry concerns, the NPRM did not include a requirement that data be obtained in real-time fashion. Rather, some delay in data relay would be acceptable as long as an applicant's procedures are adequate to accomplish the regulatory objective of ensuring reentry flight is initiated only under nominal conditions or non-nominal circumstances evaluated and approved for safety impacts. However, the FAA cautions that, as for ELVs, should data be lost due to an event before it can be recovered, it will be more difficult to address and resolve potential safety issues before the next flight may be conducted.

Some misunderstanding appears in the comments because the terms ''launch'' and ''reentry'' by definition include operations other than flight. However, the regulatory text reflecting the requirement to monitor safety-critical systems, proposed § 431.43(a)(4) and (e)(1), refers to the ''mission'' and to flight, respectively. Under § 431.35(a) of this final rule, the FAA defines the term ''mission'' for purposes of part 431 to mean licensed flight. For purposes of clarity, the monitoring requirements that appear in § 431.43 of the final rule are modified to reflect mission flight and not pre-or post-flight ground operations.

A number of comments objected to the perceived requirement that the ability to monitor safety-critical systems necessarily means that telemetry must be fed to a manned control center, and the attendant costs of such a requirement. The COMSTAC report also indicates that the FAA should not assume that RLVs will be limited to ground control systems. Prospective operators of piloted RLVs questioned whether monitoring must be performed on the ground or whether crew members on the vehicle could function as data monitors and fulfill the regulatory requirement. The FAA does not specify in the final rule the precise means or the form in which data is received by a vehicle operator in order to remain compliant with the regulations, nor where data must be received. Although telemetry is the typical means of accessing data, particularly for unmanned systems, the FAA would consider acceptable other means of monitoring data that satisfy the regulation. For example, the crew of an RLV may be an adequate means of monitoring status of safety-critical systems and the applicant's procedures, submitted in accordance with § 431.43(a)(4), must demonstrate that using on board personnel will be adequate to perform the intended purpose of the requirement. However, the crew would also be a safety-critical system inasmuch as their performance would be essential to safe operation and, through the system safety process, an applicant would need to show that risks to public safety are sufficiently mitigated in the event the crew became incapacitated. An applicant's system safety process would address the adequacy of medical qualifications of crew members in the performance of safety-related responsibilities. Advisory guidance offered by the agency, Advisory Circular AC No. 431.35–2, refers to 14 CFR part 67, first-class airman medical certification requirements, in providing guidance on medical qualifications of crew members that, if satisfied, may be relied upon by an applicant as part of its system safety process. The results of hazard identification and risk assessment analyses would determine whether, and the extent to which, deviations from such medical qualifications would contribute to mission risk, and whether those contributions are acceptable because risk criteria for the mission are not exceeded or are sufficiently mitigated.

One commenter noted that there may exist safety-critical systems whose integrity and performance cannot be monitored when an RLV is on orbit. For example, the vehicle's heat shield may have been impaired or compromised during launch flight or while the vehicle is on orbit. The FAA acknowledges that there are some systems that may be critical to safe reentry flight of an RLV for which it is impossible to gather flight data prior to initiating the descent from orbit to Earth. For those systems, the applicant would seek relief from the requirement, or a waiver, to conduct monitoring of such systems after the RLV has been launched. A grant of relief from the requirement would be conditioned upon a determination by the FAA that public safety is not compromised as a result. For example, if an applicant has performed testing and analysis during development and before launch of an RLV that supports a finding that a system, not otherwise subject to monitoring, is sufficiently reliable then the requirement to monitor that system may be removed or waived.

Another comment questioned the requirement to monitor safety-critical system status ''immediately'' before enabling reentry flight. The FAA revises this requirement in the final rule to reflect the need for monitoring of such systems, proximate in time to initiation of reentry flight, in order to verify readiness and capability to accomplish safe return to Earth. For some vehicles, data obtained one or perhaps more than one orbit before de-orbit burn is initiated will be sufficient to achieve the regulatory objective of mitigating risk to public safety.

C. Positive Enabling of Fail-Safe Reentry

The proposed rules require an operator to issue a command enabling reentry of an RLV from orbit. The rationale provided in the NPRM explains that positive control over reentry flight is necessary to ensure that reentry occurs under the conditions necessary to ensure that risks to public safety do not exceed acceptable levels.

Safety-critical systems must be verified for status and proper configuration, airspace may need to be cleared in the reentry corridor, and vehicle operational constraints must be satisfied, among other things, before reentry flight may be initiated. An applicant would be required to submit procedures as part of an application that ensure conformance with this restriction.

The operational restriction prohibiting a totally autonomous reentry of an RLV from orbit generated numerous comments and objections. Kistler, in particular, objected to requirements that expressly require a person in the loop stating that such requirements would amount to a design, rather than a performance, standard and that autonomous systems should be assessed on a case-by-case basis. The FAA disagrees with Kistler's characterization of the requirement. Although positive enabling is required, the FAA does not dictate how enabling would be accomplished.

At the February 11, 1999 public meeting and as reflected in the COMSTAC report, industry representatives argue that on board autonomous systems can be made equally effective and reliable as systems relying on personnel on the ground. The FAA agrees that this may be so and does not intend to preclude or inhibit development of RLVs incorporating innovation in autonomous control. Current ELV functions utilize autonomy in the separation and ignition of upper stages, fairing separation and payload deployment, and for non-nominal situations where human response is inadequate, such as autonomous engine shutdown to avoid imminent catastrophic failure. The FAA supports continued use and development of autonomous systems.

One comment observed that placing a human in the loop creates opportunities for other systems to fail. Even so, the FAA maintains that it is preferable from a safety validation standpoint to assure an opportunity exists to confirm conditions for safe reentry. Kelly suggested that each developer be allowed to propose a reentry initiation approach that ensures public safety while enabling the vehicle developer to capitalize on the unique operational characteristics of the developer's concept of operations. Notwithstanding the benefits of Kelly's proposed approach to ensuring safe reentry, the FAA has great concern over the complexity of autonomous RLV systems and their reaction to a nearly infinite number of system failure combinations that may occur.

The FAA is aware that even with a positive enabling command problems may still occur, particularly if the command is based on poor quality or inaccurate information. For example, a Chinese reentry capsule was commanded to fire its descent motor at the proper time; however, it was in reality pointing about 90 degrees off of its planned attitude. As a result, the vehicle did not reenter but instead went into an orbit from which it decayed about two and a half years later. The FAA's regulatory approach to reentry safety is intended to avoid problems of this nature, to the extent they are foreseeable and predictable.

Lockheed Martin commented that the proposed rule appears contrary to current expendable launch vehicle practice where many critical activities, such as ignition of an upper stage, may be controlled autonomously within the vehicle. In place of the proposed requirement, Lockheed Martin recommended changing the requirement such that a positive command disabling an RLV would be required instead of a positive enabling command. The FAA declines to adopt the recommendation because it would not allow for the positive control that the FAA considers necessary. Lockheed Martin's suggestion would not adequately address a situation where, for example, a communications failure results causing the vehicle to begin reentry without an opportunity to independently check and verify the status of safety-critical systems.

The FAA retains the requirement for positive enabling of reentry flight in the final rule. and does so In the final rule, the FAA imposes a requirement for positive enabling of reentry for public safety assurance purposes in fulfillment of its statutory responsibility for safety. The FAA believes that there must be an opportunity to abort reentry flight and leave an RLV on orbit when conditions for safe reentry cannot be verified. Sole reliance by an operator on an autonomous system would not be sufficient from a public safety standpoint where safe limits on public risk exposure cannot otherwise be assured and public safety could be compromised. The final rule does not prohibit some autonomous operation of an RLV or reentry vehicle. Rather, the FAA requires that an operator verify the status of safety-critical systems prior to enabling the reentry process. Human intervention to issue a command enabling reentry of a vehicle is not limited to initiating de-orbit burn. The reentry process that is enabled may, in fact, be an autonomous one. Human intervention may be accomplished by flight crew, as Pioneer Rocketplane (Pioneer) intends. The FAA envisions that the requirement for a person in the loop to positively enable reentry might possibly be relaxed in the future as RLV performance and flight history develops. By establishing regulatory requirements for human control for functions critical to public safety at this early stage of RLV development, the FAA does not intend to exclude or inhibit development and use of autonomous control systems for RLV nominal flight.

Comments pointed out the corresponding need to assure safe return to Earth of vehicle stages, other than RLVs from orbit, such as an expendable upper stage of a vehicle where a multi-stage vehicle is used. The FAA agrees. Where a vehicle stage operates ballistically as part of an RLV launch system, but is not itself a reentry vehicle, the flight trajectory for launch must be designed such that expected casualty criteria for the mission are not exceeded. Despite Vela's objection, this requirement is not qualitatively different than that applicable to an ELV. Although the de-orbit of an ELV upper stage is not a licensed event, its contribution to expected casualty, historically an extremely small amount, is considered as part of an FAA licensing determination.

D. Reentry Sites

To further mitigate risk to public safety, the FAA proposed a size suitability restriction on the landing area designated for an RLV or other reentry vehicle. The size suitability restriction would apply to those areas designated by a license applicant for a vehicle landing under nominal and non-nominal circumstances. It would also be used to determine whether a reentry site operated under an FAA license could be designated by an RLV or reentry vehicle operator as a proposed location for reentry of its vehicle.

The size of the site selected as the landing area would have to be sufficiently large such that the vehicle would land within its boundaries with a .997 probability rate, assuming no major system failure that would make reentry essentially an entirely random event. The NPRM referred to the three-sigma dispersion of a vehicle as the basis upon which to calculate the necessary size of the landing area. The term ''three-sigma'' refers to three standard deviations from the mean, or average point, assuming a standard normal distribution. Atmospheric, meteorologic and other external conditions assumed in calculating the three-sigma dispersion of a vehicle would become conditions of the

authorization granted to reenter at that location. Alternatively, the area designated could be adjusted to accommodate different conditions or variables.

Reference to the three-sigma dispersion of an RLV appears in two provisions of the regulatory text governing launch and reentry of an RLV (§§ 431.35(d)(8) and 431.43(b)(1)). Additionally, a licensed operator of a reentry site would be limited to offering its site for use in support of vehicle reentries for which the three-sigma dispersion footprint of the vehicle would be wholly contained within the site. For an RLV mission license, an applicant would be required as part of the system safety process that includes hazard identification and risk assessment to provide flight trajectory analyses for launch flight through orbital insertion and reentry flight through landing. Flight trajectory analyses must include the three-sigma dispersion of the vehicle. An applicant for an RLV mission license would also have to designate the area in which its vehicle and any vehicle stage would land under nominal circumstances, and if an applicant relied upon the use of pre-designated contingency abort locations to satisfy acceptable risk criteria for the mission then those locations would also need to be identified. A designated landing location, whether for nominal operations or in the event of reliance by an applicant upon contingency abort capability, would be of suitable size under the proposed restriction if 997 times out of 1,000 attempts, vehicle or vehicle stage landing would be wholly contained within the designated location *and* if the location is sufficiently large that it would contain all landing impacts, including debris dispersion, any toxic release, and overpressure resulting from an explosion. The latter requirement means that a location designated to support reentry of an RLV or other reentry vehicle must be far enough away from a populated area such that debris, toxic release, and overpressure effects from an explosion would not jeopardize public safety if splatter or wind effects cause hazardous materials to pass beyond the boundary of the designated location, even though a vehicle's landing point was within its boundary. As an example, for a reentry site that utilizes a runway for vehicles that land horizontally, the three-sigma landing footprint includes the point of touchdown and the vehicle rollout. In all cases, based on the three-sigma footprint, any toxic fumes released from the vehicle after landing, in the case of normal operations (*e.g.,* at end of rollout) or in the event of vehicle failure, should remain within the reentry site as well as any debris or adverse overpressure effects from an explosion.

The supplementary information provided in the NPRM to explain the three-sigma site suitability criterion referred to vehicle maneuverability in defining the area that comprises a designated reentry location. In doing so, the FAA improperly referred to an elliptical contour, rather than a footprint, prompting comments on the accuracy of the .997 probability rate utilized by the FAA. The FAA did not intend to refer to within-track and cross-track error, necessarily a bivariate calculation of the probability of landing accuracy. Rather, the FAA intends to apply a univariate measure of acceptability under which a reentry location may be of suitable size if the vehicle will land within it at a .997 probability rate. Statistically, the three-sigma dispersion limitation means that no more than 3 out of 1000 landings from an RLV reentry would lie outside of the designated location.

Kistler commented that the FAA needs to identify the contributors to the three-sigma dispersion of a vehicle or agree to negotiate them with an applicant. Dispersion factors may vary for different vehicles; therefore, the FAA declines to list them in this regulation. Instead, dispersion factors would be identified by an applicant as part of its hazard identification and risk assessment and evaluated by the FAA through the licensing process. As part of that process, the FAA would determine whether all significant contributors to a vehicle's three-sigma dispersion have been identified.

From the perspective of ensuring aeronautical operations are not jeopardized by RLVs, the Aircraft Owners and Pilots Association (AOPA) observed that RLV controllability during launch flight is much better than during reentry flight and that vehicle design and technology should accommodate the impacts of meteorological conditions on a vehicle's three-sigma dispersion. The FAA understands that RLVs will be of varying controllability during reentry flight, depending upon the technology employed. RLVs that can be controlled more precisely should exhibit smaller dispersion patterns along their trajectory because of the operator's ability to maneuver them and lessen the effects of perturbing atmospheric forces. Vehicles need not have wings to be maneuverable. A capsule that is a reentry vehicle could act as a lifting body during reentry flight and gain some degree of maneuverability.

AOPA commented and NorthStar Spaceport Corporation (NorthStar) echoed concern that meteorologic forces may affect three-sigma trajectory dispersion. The FAA agrees and notes that other contributors to trajectory dispersion must also be identified as part of an applicant's hazard identification and risk assessment. These may include the duration and angle of de-orbit burn, as well as the accuracy with which dispersion modeling is performed. Variables such as those listed in this paragraph may become part of the conditions under which reentry would be authorized. For example, if vehicle operational characteristics were assessed assuming certain wind conditions, reentry would not be allowed at a time when those conditions did not exist.

Trajectory dispersion modeling for RLVs and other reentry vehicles during nominal and non-nominal flight may also be useful to the FAA in determining appropriate airspace clearances. Comments to the NPRM suggested that use of a reentry corridor or box within which an RLV reenters controlled airspace, and the three-sigma dispersion of a vehicle would assist in defining that area. Vela commented that aircraft-like RLVs that are controlled through reentry flight would require clearance comparable to similar aircraft, whereas a ballistic reentry of a capsule-like vehicle would likely require a larger clearance zone.

Operation of RLVs within the national airspace system is under review by the FAA as the agency develops its concept of operations for an integrated air and space traffic management system. It is beyond the scope of this rulemaking to stipulate how airspace clearances will be designed and implemented by the FAA to accommodate emerging RLV and reentry vehicle traffic.

Kistler expressed concern over the three-sigma dispersion size suitability requirement of a reentry site, as expressed in the draft interim safety guidance, noting the cost of preparing an entire site for vehicle landing. The FAA imposes no requirement that an entire location be leveled or otherwise prepared to ''host'' the landing of an RLV or other reentry vehicle. The manner in which a landing site is prepared may affect mission success in terms of the ability of a vehicle to withstand landing impacts but is not dictated by the FAA in this rule. The size requirement imposed upon a landing site is determined for the

purpose of protecting the public, not the vehicle, from landing effects.

In summary, and in response to AOPA's and Kistler's comments, the FAA's concern with respect to the three-sigma dispersion of an RLV or other reentry vehicle is two-fold. First, the risk of a non-nominal trajectory and the resultant dispersion of a vehicle in the event of failure must be addressed as part of the system safety process employed by an applicant, typically through hazard identification and risk assessment, to ensure that risk to public safety is contained at an acceptable level. Second, risk of an errant, off-site landing must be limited in the interest of public safety. Accordingly, an applicant must designate an appropriate location at which its vehicle will land with a sufficient degree of predictability, established by this final rule as 997 out of 1,000 landing attempts. Size of the location is not the sole determinant of suitability. The consequences of a vehicle landing in a designated location must also be contained within the site or sufficiently removed from public exposure for the site to be suitably located. As illustrated above, an RLV that lands on a runway touches down in one spot but continues to roll. The area required for continuing roll of the vehicle must be controlled area that does not expose the public to risk or it must be part of the designated location itself. Similarly, a narrow landing location may not be appropriate if toxic fumes released upon landing could be blown outside of the location or a controlled area such that the public is exposed to them. The final rules retain the operational restrictions proposed with respect to suitability of a location designated for an RLV or other reentry vehicle landing, including contingency abort locations in the event a licensee designates one or more such locations as part of its application.

Scope of RLV Mission and Reentry Licensing Under the Final Rule

The FAA's proposed approach to combining launch and reentry authorization in a single license covering an RLV mission was endorsed by a number of comments. However, the scope of licensed activity, as described in the NPRM, prompted a good deal of discussion in the comments. Many more detailed comments on the appropriate scope of FAA licensing authority were received in response to proposed rules governing reentry financial responsibility. Accordingly, a more complete discussion of RLV launch and reentry licensing coverage appears in the companion rulemaking.

1. Comments on Scope of RLV Launch Authorization.

The NPRM proposed to continue inclusion of pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site in the definition of launch, as codified at 14 CFR 401.5, for purposes of licensing an RLV mission. USA took issue with the definition of ''launch'' codified in final rules at 14 CFR 401.5, despite statutory direction that the term ''launch'' includes activities involved in the preparation of a launch vehicle and payload for launch, when those activities take place at a launch site in the United States. 49 U.S.C. 70102(3). USA recommended that launch begins when an operator places a vehicle at the launch pad with the intent to launch the vehicle. B-G commented against licensing of pre-flight ground operations before the launch vehicle is loaded with propellants or other hazardous materials because worker safety during the conduct of such operations is otherwise regulated by the Occupational Safety Health Administration (OSHA). Moreover, including such operations as part of a launch would subject them to additional environmental scrutiny, according to B-G. B-G recommended that launch begins when the vehicle is loaded with propellants or other hazardous materials.

Lockheed Martin and NorthStar specifically endorsed inclusion of ground operations, before and after RLV flight, as part of licensed launch activity; however, NorthStar would not be particular about whether post-flight ground operations and vehicle remediation, if any, would be considered part of licensed reentry or the next licensed launch. ERPS similarly viewed pre-flight operations and post-flight operations after an RLV returns to Earth as properly within the FAA's licensing authority; however, maintenance unrelated to a particular flight would not be licensed activity in its view.

In this final rule, the FAA does not intend to redefine the commencement of a licensed launch for purposes of an RLV mission. Pre-flight operations at a launch site are regulated by the FAA as part of launch, consistent with the CSLA definition, because of the risks posed to public safety and the safety of property. For purposes of pre-flight safety and risk, the FAA makes no distinction between an RLV and an ELV launch.

Comments on the definition of launch included a number of recommendations governing the end of launch flight for purposes of FAA licensing jurisdiction. B–G suggested retaining the licensee's last exercise of control over its launch vehicle for a suborbital launch vehicle. For an orbital vehicle, B–G suggested that launch ends when a vehicle is placed in a long-lived orbit, defined as 30 days or more or the last exercise of control, whichever comes first. Vela commented that using the ELV definition of launch is inappropriate for an RLV because an RLV may rely upon autonomous systems, such that the vehicle is no longer under the operator's control although flight continues, and because an RLV would be ''launched'' when it lands as part of a reentry because it has arrived at the launch site.[6] ERPS recommends a three-phased approach to an RLV mission consisting of a launch, on orbit and reentry phase. The launch phase would be defined as ending at the conclusion of powered flight, when the vehicle has attained its intended initial orbit, or its intended suborbital trajectory. Under the ERPS definition of launch, payload deployment, the event proposed by the FAA as marking the end of licensed launch of a typical RLV, would be an on-orbit operation not subject to FAA licensing.

The FAA disagrees with B–G's and Vela's comments and agrees to some extent with the phased approach suggested by ERPS for an RLV mission. However, as explained in greater detail in the companion rulemaking governing reentry financial responsibility, the FAA explains that the end of an orbital RLV launch is defined at payload deployment for RLVs having payload deployment as a mission objective. For other RLV missions, the launch phase concludes upon completion of one orbit in steady-state condition at the location intended by the licensee.

TGV sought clarification of the definition of the term launch such that it would exclude low energy test flights that remain within the atmosphere below an altitude of 50,000 feet. The FAA will not prejudge whether a flight test requires FAA licensing or may be accomplished under an experimental airworthiness certificate. Such decisions will be made on an individual basis to ensure consistency with FAA statutory authority and direction.

2. Comments on Scope of Reentry Authorization.

The NPRM proposed to define ''reentry'' to include those on-orbit

[6] The companion rulemaking governing reentry financial differentiates between vehicle landing at a reentry site and arrival of a launch vehicle at the gate of a launch site for purposes of implementing FAA launch licensing authority.

activities conducted to determine reentry readiness and that are unique to reentry and critical to ensuring public health and safety and the safety of property during reentry.

Kistler commented that the definition of reentry is unnecessarily broad and could lead to licensing of all on-orbit activities. Kistler proposes two alternative definitions. The first would define reentry to begin upon creation of an IIP. The second alternative would include checkout for the deorbit maneuver. ERPS commented that for an RLV in low Earth orbit, reentry begins at preparation for retrofire. For other vehicles, reentry begins at preparation for atmospheric interface. Examples of such other vehicles include those on suborbital trajectories that do not require retrofire to reenter, vehicles in geosynchronous orbit for which retrofire occurs hours before atmospheric interface, and vehicles returning from the Moon for which retrofire would occur days before atmospheric interface.

To summarize the FAA's response to comments on the appropriate scope of FAA reentry licensing, the FAA has determined that its licensing authority must cover reentry readiness activities conducted on orbit in order to ensure that the FAA fulfills its public safety mandate. The definition of reenter codified in this final rule includes those activities and the licensing process would be utilized to identify when those activities begin for a particular vehicle or reentry proposal. A more complete discussion of FAA licensing authority over reentry appears in the companion rulemaking governing reentry financial responsibility.

The FAA understands that there are activities conducted on orbit that are part of reentry readiness and would fall within the definition of reentry except that they may also be performed for other mission purposes and are therefore not ''unique'' to reentry. Accordingly, as explained in greater detail in the companion rulemaking, the FAA modifies the definition of reentry in the final rule to more accurately delimit those activities that may be comprehended by the FAA's licensing authority and has removed reference to ''unique'' activities.

The FAA requested public comment on the appropriate commencement of licensed reentry when reentry has been delayed by design for an extended duration. For delayed reentry by design, Kelly suggested that reentry begins with initiation of procedures for reentry preparation. The FAA considers that Kelly's suggestion is qualitatively consistent with the definition proposed in the NPRM under which reentry includes activities conducted in space to determine reentry readiness.

Kelly urged that licensed reentry ends when an RLV touches down on Earth. However, the FAA has determined that ground operations performed to secure a vehicle upon its return to Earth would properly be part of licensed activity to ensure that public safety is not jeopardized by an RLV that has landed. Securing a vehicle would include activities performed to ensure that hazardous materials on board the vehicle will not be inadvertently released and expose the public to risk. Propellants may need to be removed from the vehicle and other hazardous or toxic substances must be contained. The definition of the term ''reenter'' is clarified in the final rule to include post-flight ground operations necessary to render an RLV or other reentry vehicle safe to the public.

Section-by-Section Analysis and Summary of Additional Comments

Summarized in this section are comments addressing particular provisions of the proposed rule and additional analysis of some alternatives considered by the FAA in issuing final rules. Additional explanation and clarification of certain provisions of the rule is are also provided. Sections are described and discussed in numerical order; however, nonsubstantive changes in the regulatory text of the final rule are not specifically identified.

Section 400.2 Scope

Section 400.2 identifies the scope of regulations presented in 14 CFR Chapter III as commercial space transportation activities subject to 49 U.S.C. Subtitle IX, chapter 701. As proposed, § 400.2 would exclude ''exempted-class rocket activities'' from coverage under 14 CFR Chapter III. Reference to ''exempted-class'' was intended to mean those activities not subject to FAA licensing. Since 1988, activities not subject to FAA licensing under 14 CFR 400.2 have been identified as amateur rocket activities and space activities carried out by the United States Government on behalf of the United States Government. Instead of adding a new term to the regulations, the final rule reverts to the 1988 formulation of activities for which an FAA license is not required.

Section 401.5 Definitions

These following new terms are the same as those introduced in the NPRM in § 401.5. They are ''contingency abort,'' ''emergency abort,'' ''flight safety system,'' ''operation of a reentry site,'' ''reenter,'' ''reentry accident,'' ''reentry incident,'' ''reentry operator,'' ''reentry site,'' ''reentry vehicle,'' ''reusable launch vehicle,'' ''safety-critical,'' and ''vehicle safety operations personnel.'' The term ''mishap'' is revised to include reentry events.

The NPRM inadvertently failed to make a distinction in the definition of ''launch'' between the end of ELV flight and RLV flight, although it was described in the supplementary information. In the final rule, the FAA clarifies that for purposes of an ELV launch, flight ends after the licensee's last exercise of control over its launch vehicle. For purposes of an orbital RLV launch, flight ends after deployment of a payload for an RLV having payload deployment as a mission objective. For other orbital RLVs, flight ends upon completion of the first sustained, steady-state orbit, at the intended location of the RLV.

The final rule defines the term ''reenter'' differently from that proposed. For purposes of clarity, the term defined also includes the noun form, ''reentry.'' ''Reenter; reentry'' includes activities conducted to determine reentry readiness that are critical to ensuring public health and safety and the safety of property during reentry flight. However, reentry readiness activities need not be unique to reentry in order to be included as part of a licensed reentry. They must, however, be performed for the express purpose of initiating reentry and must be safety-critical from a public safety perspective to be included as licensed activity. ''Reenter; reentry'' consists of those on-orbit activities just described, reentry or descent flight and certain ground operations after landing on Earth to ensure a reentry vehicle will not pose a threat to public health and safety and the safety of property. The definition of ''reenter; reentry'' is clarified to remove reference to activities unique to reentry and include specific reference to post-landing ground operations. The interested public is referred to the comprehensive discussion of activities comprehended by the term ''reentry'' that appears in the companion rulemaking governing reentry financial responsibility.

''Flight safety system'' is a defined term, abbreviated as FSS for ease of reference in the supplementary information portion of the NPRM. The AOPA recommends use of another abbreviation to avoid confusion with ''flight service station,'' a term used in the Federal Aviation Regulations codified at 14 CFR parts 1–198. The FAA makes no change to the final rule on the basis of the comment because no confusion in terminology has been evidenced to date. The FAA will

reconsider this terminology if a problem becomes apparent.

''Hazardous materials'' is defined to mean those identified as hazardous materials in 49 CFR 172.101. B–G commented that the definition should be limited to hazardous materials under 49 CFR 172.101, as applied to cargo aircraft. 49 CFR 172.101 contains a table of hazardous materials for the purpose of transportation of those materials. Materials are identified by hazard class and the table further references requirements applicable to labeling, packaging, and quantity limits of those materials aboard aircraft. However, any materials listed in the table are considered hazardous for purposes of 14 CFR chapter III and no change is made to the definition in the final rule.

The NPRM defined ''operation of a reentry site'' in a manner similar to ''operation of a launch site.'' NorthStar suggested removing reference to ''safety operations'' from both definitions and replacing it with the phrase ''licensed operations.'' The FAA uses the term ''safety operations'' to denote those activities conducted at a launch or reentry site that may pose a risk to public health and safety and the safety of property and for which licensing is therefore required. Other activities, although conducted at a launch or reentry site, may not require regulatory oversight by the FAA. Reference to ''safety operations'' is therefore retained in the final rule definitions.

ACTA suggested that the term ''safety-critical'' in the context of demonstrating acceptable RLV mission risk should be limited to that which has a direct potential effect on public safety. The FAA agrees and has adjusted the definition to clarify that safety-critical means critical to public safety.

Kelly and ERPS proposed additional terms for possible inclusion in § 401.5. Kelly suggested adding a definition of ''exempted-class rocket activities.'' The FAA has removed reference to exempted class rocket activities that appeared in proposed § 400.2 and there is no longer a need to define the term. Kelly also suggested adding definitions for ''expectation of casualty'' and ''impacted landmass.'' The final rule refers to acceptable risk, which is measured in terms of the expected average number of casualties to the collective members of the public exposed to debris impact hazards. An FAA Advisory Circular, AC No. 431.35–1, provides detailed guidance on how casualty expectation may be calculated for purposes of operating a launch or reentry vehicle. Accordingly, the FAA does not agree that further definition of the term ''expectation of casualty'' is required. The FAA also does not find a need to define ''impacted landmass,'' as that term appears only in explanatory information and not the regulatory text.

ERPS, Orbital Sciences Corporation (Orbital Sciences) and Pioneer Rocketplane suggested delimiting where ''outer space'' begins. The CSLA defines ''launch'' as ''to place or try to place a launch vehicle or reentry vehicle and any payload from Earth—(A) in a suborbital trajectory; (B) in Earth orbit in outer space; or (C) otherwise in outer space, * * *'' 49 U.S.C. 70102(3). ''Reenter'' and ''reentry'' means to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth. 49 U.S.C. 70102(10). The reference to ''otherwise, in outer space'' may include interplanetary missions or travel to the Moon. A suborbitally operated RLV may be regarded solely as launch of a launch vehicle, although for licensing and regulatory purposes the FAA has determined to license suborbital RLVs under the RLV mission licensing regulations in order to ensure a consistent approach to safety issues presented by intact landing of a vehicle designed to survive atmospheric forces. Thus, for purposes of safety regulation and licensing, the difference between an RLV reentry that is conducted suborbitally from one that begins on Earth orbit is a distinction without a difference. As RLVs develop, the FAA would evolve a regulatory program that accommodates deep space exploration and transportation. For the near term, RLV missions chiefly target low Earth orbit and the final rule focuses principally on safety issues posed by such mission. Accordingly, it is not necessary to propose a delimitation of outer space in the final rule.

In a similar vein, NorthStar suggested defining ''payload'' to mean an object that a person undertakes to place in space, rather than outer space. Although the FAA may agree with the suggestion, the agency retains the current definition of ''payload'' in the final rule simply to reflect the statutory definition that appears at 49 U.S.C. 70102(8).

Orbital Sciences pointed out that because the definition of ''reentry site'' refers to reentry vehicles, the landing site of booster stages of an RLV that do not reach Earth orbit are not regulated. The final rule does, in fact, provide criteria for suitable and attainable locations for vehicle staging impacts under § 431.43(b). Therefore, a separate license is not required for a person to offer use of a location at which a vehicle stage may land although the location must satisfy safety and environmental criteria under RLV mission or reentry licensing criteria.

Section 404.1 Scope

As in § 400.2 of the final rule, the FAA replaces reference to ''launch'' with ''transportation'' in describing the extent of activities to which part 404 applies. Part 404 provides the agency's procedures for issuing implementing regulations.

Section 404.3 Filing of Petitions to the Associate Administrator

Section 404.3 is revised to include rulemaking petitions regarding reentry and operation of a reentry site.

Section 405.1 Monitoring of Licensed and Other Activities

Section 405.1 provides that reentry sites and reentry vehicle manufacturing, testing, assembly and production facilities are subject to FAA monitoring and observation. The FAA may monitor licensee or contractor facilities at which a payload is integrated with a launch or reentry vehicle. NorthStar objected to FAA monitoring authority with respect to payloads otherwise unlicensed by a Federal agency and for which a favorable payload determination has been granted. NorthStar's comments focused on how monitoring and observation of payloads would affect the launch industry in terms of economy, fairness, and privacy.

Under the CSLA, the FAA retains certain responsibility with respect to payloads to ensure that their launch or reentry does not jeopardize public health and safety, the safety of property or national interests of the United States. To fulfill this safety responsibility, the CSLA expressly grants the Secretary of Transportation legal authority to place a government officer or other observer at a site at which a payload is integrated with a launch or reentry vehicle and directs the licensee to cooperate with the observer. The final rule reflects the agency's statutory authority with respect to monitoring activities involving payloads and no change is made to this provision in the final rule.

USA commented that information learned as a result of monitoring activities be subject to the confidentiality and non-disclosure requirements accorded a license application under § 413.9. The FAA agrees that trade secrets or proprietary commercial or financial data disclosed to the agency under its statutory authority shall be accorded confidential treatment upon request. The CSLA allows disclosure of such information only where its non-disclosure is

determined by the Secretary to be in contrary to the public or national interest. 49 U.S.C. 70114. Given the statutory limitation on disclosure of such information, the FAA does not agree that it is necessary to include additional confidentiality and non-disclosure restrictions in the final rule governing monitoring of licensed activity.

Section 405.5 Emergency Orders

Section 405.5 is amended by adding reentry and operation of a reentry site to the agency's authority to terminate, prohibit or suspend licensed activity.

Section 406.1 Hearings

Section 406.1, as revised, reflects the rights of an owner or operator of a reentry payload, as well as any licensee, to a hearing.

Section 413.1 Scope

The application procedures of part 413 of 14 CFR Chapter III also apply to applications for a license, or transfer or an existing license, to reenter a reentry vehicle or to operate a reentry site, as reflected in the final rule.

Section 413.3 Who Must Obtain a License

Section 413.3 specifies that any person must obtain a license to reenter a reentry vehicle or operate a reentry site in the United States and that a U.S. citizen, as defined in 14 CFR 401.5, must obtain a license to reenter a reentry vehicle or operate a reentry site outside of the United States. Reentry and reentry site licensing requirements for foreign entities in which a U.S. citizen has a controlling interest are also specified and are comparable to those currently applicable to a launch and operation of a launchsite by such entities.

USA sought clarification of the licensing requirement for reentry of a reentry vehicle launched by using a foreign owned or controlled launch vehicle. Section 413.3, as proposed in the NPRM and codified in the final rule, adequately covers such situations. An FAA license is required for any person to reenter a reentry vehicle in the United States and an FAA license is required for a U.S. citizen to reenter a reentry vehicle anywhere in the world, regardless of the location at which its launch occurred. Under part 435 of the final rule, acceptable risk for such a reentry would take into account the risk associated with its launch. Where a reentry vehicle is launched abroad by a foreign entity and its operator seeks a license to reenter in the United States, the FAA would require certain data of the launch provider upon which the FAA may determine acceptable risk for the proposed reentry is not exceeded, even though the launch would not be subject to FAA licensing. The launch provider would not be subject to FAA regulatory authority and cannot be compelled to cooperate with the FAA, however. As a practical matter, absent a sufficient basis upon which the FAA may determine acceptable risk is not exceeded, the FAA would be unwilling to license the reentry.

Section 413.5 Pre-Application Consultation

No change was proposed to § 413.5 in the NPRM; however, USA suggested a more detailed statement in the regulation as to the data the launch operator should have available when consulting with the FAA. The FAA uses pre-application consultation as an important means of identifying the data that will be required as part of an application for a license. The ''flesh on the bones'' sought by USA in its comment is derived through this informal consultative process which has worked successfully in identifying issues and data requirements associated with individual licensing proposals.

Section 415.1 Scope

Section 415.1 of the final rule limits the scope of part 415 to requirements pertaining to licenses for launch of an ELV or other launch vehicle that is not an RLV. It refers the reader to part 431 of 14 CFR Chapter III, subchapter C, ''Licensing,'' for RLV mission license requirements.

Part 431 Launch and Reentry of a Reusable Launch Vehicle (RLV)

Part 431 of the final rule sets forth comprehensive requirements applicable to obtaining an RLV mission license and requirements for remaining in compliance with the license. A licensing determination for an RLV mission is based upon a number of approvals that must be granted by the FAA before it can issue a license. Requirements for obtaining approvals are contained in subpart B (Policy Review and Approval for Launch and Reentry of a Reusable Launch Vehicle), subpart C (Safety Review and Approval for Launch and Reentry of a Reusable Launch Vehicle), subpart D (Payload Reentry Review and Determination), and subpart F (Environmental Review). Requirements for obtaining approval to launch a payload appear in 14 CFR part 415. A licensee authorized to conduct an RLV mission must remain in compliance with certain ongoing terms of the license and terms and conditions of a license appear in subpart E (Post-Licensing Requirements—RLV Mission License Terms and Conditions).

Section 431.1 Scope

Section 431.1 of the final rule provides that part 431 covers requirements for obtaining and remaining in compliance with an RLV mission license. An applicant for an RLV mission license is referred to part 413 of 14 CFR Chapter III, subchapter C, for application preparation requirements.

Section 431.3 Types of Reusable Launch Vehicle Mission Licenses

An RLV mission for which a license may be granted under part 431 consists of launch and reentry of an RLV. The two authorizations required for RLV launch and reentry are combined under a single license authorizing an RLV mission. An RLV mission license is also required to initiate authorized ascent and descent of a suborbital RLV.

Consistent with launch licenses issued for ELVs, the FAA includes in the final rule provisions for granting two types of RLV mission licenses. The two types of licenses that may be issued are mission-specific and operator licenses.

A mission-specific license is used to authorize a licensee to launch and reenter, or land, one model or type of RLV from one approved site to the same or another approved site. One site would be approved for purposes of launch and one site would be approved for purposes of vehicle reentry or landing; however, the same site may be used to support both events. The NPRM omitted reference to a launch site approved for the mission and the omission is corrected in the final rule. The license would also authorize use of a contingency abort location for a particular RLV mission where an applicant has identified the location in order to satisfy risk criteria applicable to the mission.

A mission-specific license is not limited by its terms to the conduct of a single RLV mission. Multiple missions may be authorized by the license; however, each mission is identified in the license. A mission-specific license may be used to authorize a flight test program involving one type of RLV for which launch and reentry or landing take place at the sites identified in the license. The license terminates upon completion of the missions authorized by its terms or the expiration date of the license, whichever first occurs.

USA commented that the authorization granted by a mission-specific license ought not be limited to use of a single reentry site. The FAA

notes that a mission-specific license may also authorize use of a contingency abort location. However, the broader authorization suggested by USA would typically be granted by the FAA under the terms of an operator license. An operator license is issued to operators that have demonstrated their safety capability on an ongoing basis. An operator license authorizes RLV missions involving any one of a family of RLVs and identifies approved parameters, such as launch and reentry trajectories and any of a number of approved launch and reentry sites that may support the RLV missions authorized by the license. Based on historical experience with operator licenses for ELV launches, the final rule provides for a two-year renewable term of an operator license. NorthStar did not object to a two-year license term but suggested expedited renewal procedures. The FAA agrees that license renewals may rely upon existing documentation as long as it remains valid and complete and that the FAA should utilize procedures for expediting license renewals. The FAA has in fact employed this approach to renewing ELV operator licenses without compromising its safety mandate and intends to do so for RLV mission licenses.

USA suggested that RLV operators with proven experience be able to ''graduate'' to longer term licenses. The FAA agrees that, with experience, it may consider issuing longer term operator licenses, as was recently approved for ELV launches. Initially, the FAA granted two-year renewals of ELV launch licenses and as a result of rulemaking proceedings determined last year to issue five-year operator licenses.

Section 431.5 Policy and Safety Approvals

Section 431.5 establishes the requirement that an applicant for an RLV mission license must obtain policy and safety approvals. An applicant may seek the approvals in any order and may do so in advance of submitting a complete license application. Generally speaking, submission of an application for policy review of an RLV mission requires less technical information from the applicant and may be less burdensome to prepare. Based upon the FAA's experience in licensing ELV launches, early submission of information to support a policy review is useful to determine whether the FAA would disapprove a proposed mission for policy reasons before the applicant and the FAA undertake the considerable effort required for safety review and approval. The FAA believes that the same principle would apply to RLV mission licensing and therefore allows an applicant to apply for a license in parts.

Section 431.7 Payload and Payload Reentry Determinations

Payloads proposed for launch on an RLV and/or for reentry are subject to FAA review unless exempt. Government payloads are exempt from FAA review and payloads subject to review for launch and/or reentry purposes by another Federal agency would not be subject to duplicative review by the FAA. However, notwithstanding approval by another Federal agency, the FAA would evaluate safety of vehicle flight involving a payload and the particular hazards it may present.

For purposes of launching a payload, the requirements contained in part 415 governing payload review and determination remain applicable to an RLV mission. However, there may be different safety and policy issues arising out of reentry of a payload although it has been approved for launch and, accordingly, a payload reentry review and determination is a component of RLV mission licensing. Where one purpose of an RLV mission or other reentry is to retrieve a space object for the purpose of returning it to Earth, a payload reentry determination would be required. The FAA need not review on an individual basis each payload proposed for launch or reentry but may issue a favorable determination for a class of payloads that share similar characteristics. Similarly, the FAA may issue a favorable determination for reentry of a payload based upon a review performed for another RLV mission license, where the payloads are similar and pose comparable safety and policy issues previously considered by the FAA. Whereas only the license applicant for an RLV mission license may apply for policy and safety reviews necessary to support a license determination, a payload owner or operator may apply for a payload and payload reentry determination separate from the license application.

Comments submitted by the X PRIZE Foundation recommended that where passengers are the payload, a single review should suffice for all RLV operations involving passengers. As already noted, this final rule does not address the unique policy and safety issues presented by passenger-bearing RLVs. In the future, the FAA will examine human factors associated with crewed and passenger-bearing vehicles and, through rulemaking, may determine whether certain criteria affecting crew and passenger health and safety are appropriate.

Section 431.9 Issuance of a Reusable Launch Vehicle Mission License

Section 431.9 provides that the FAA will issue either type of RLV mission license to an applicant who has obtained all of the required approvals and determinations required for that license. It further provides that the licensee's authorization to conduct an RLV mission is subject to its continued compliance with terms and conditions of the license. Terms and conditions include requirements for demonstrating financial responsibility for the mission. A companion rulemaking explains what a licensee must do to demonstrate compliance with reentry financial responsibility requirements.

Section 431.11 Additional License Terms and Conditions

The proposed RLV mission licensing rules included a provision whereby the FAA may amend an RLV mission license by adding or modifying license terms and conditions to ensure compliance with the CSLA and applicable regulations. NorthStar commented that the proposal would allow for harassment and capricious intervention with a licensee's activities. USA commented that modifications of law of which a licensee is not aware may place a licensee in violation of law and that a procedure for implementing such modifications would be beneficial.

FAA authority to modify a license is essential to its ability to fulfill its safety responsibility under the CSLA and to respond to changes in circumstances affecting public safety. Legal remedies and recourse are available to a licensee who believes its license amendment is arbitrary or capricious, including a right to a hearing as stated in 14 CFR 406.1. The FAA does not negotiate license terms, contrary to NorthStar's suggestion, where public safety is at peril but does agree with USA that the FAA and a licensee can cooperate in defining means of implementing necessary modifications to operations to reflect safety needs or changes in law.

Section 431.13 Transfer of a Reusable Launch Vehicle Mission License

Section 431.13 of the final rule states that only the FAA may transfer an RLV mission license and would do so where an applicant for transfer of the license has obtained all of the necessary approvals and determinations for the license. Findings already made by the FAA in issuing the license to the original licensee may be used to support a license transfer determination, to the

extent the findings remain valid and equally applicable to the transferee.

Section 431.15 Rights Not Conferred by a Reusable Launch Vehicle Mission License

Section 431.15 of the final rule provides that issuance of an RLV mission license does not relieve the licensee of its obligations to comply with other legal requirements applicable to its activities.

Section 431.21 General

This section of the final rule provides that the FAA will issue a policy approval to an applicant when the FAA has completed its review with favorable results.

Section 431.23 Policy Review

Section 431.23 of the final rule describes the scope of the required policy review and the basis upon which a policy approval would be granted. The FAA reviews the information required by the agency as part of the review to determine whether the proposed mission would present any issues, other than issues evaluated as part of the formal safety review, that would adversely affect U.S. national security or foreign policy interests, including its international obligations, or that would jeopardize public health and safety or the safety of property. The FAA consults with other Federal agencies whose mandate may be affected by a proposed RLV mission. The FAA provides written notification to an applicant of any issue raised during the review that could hinder the agency's ability to issue a policy approval. The applicant then has an opportunity to respond to concerns raised as a result of the policy review or may modify its proposal and seek approval of the mission as modified.

Space Access requested clarification of the role of other Federal agencies in the policy review conducted for a commercial mission. The following is offered as an example of the role other federal agencies may play in a policy review. A proposed RLV mission may include trajectories that could interfere with Shuttle operations. Through interagency consultation performed during the policy review, NASA would have an opportunity to examine proposed mission parameters with its missions in mind and note any potential conflicts. Overflight, during ascent or descent flight, of a foreign nation by an RLV may raise foreign policy concerns within the purview of the State Department. And, the Department of Defense would evaluate a proposed RLV mission from a national security perspective.

USA pointed out the difference in policy review parameters for an RLV mission license from that undertaken with respect to an ELV launch. For an RLV mission, the FAA reserves authority to identify safety considerations from a policy, rather than a strictly technical or engineering perspective, similar to the policy review process utilized by the FAA during the initial ten years of ELV launch licensing. Commercialization of reentry capability may present safety considerations other than those identified as part of a safety review and subject to risk assessment and technical criteria. The FAA considers that early identification of such concerns through a policy analysis would better serve the prospective RLV industry than awaiting the results of a more technical safety review. As was done during the first ten years of ELV launch licensing, license applicants would have the benefit of obtaining a determination from the FAA at an early stage in mission planning as to whether ''show stopper'' safety considerations would present an obstacle to mission licensing *even if* safety review criteria were satisfied. For example, if a proposed flight trajectory for reentry flight of an RLV were designed such that the IIP for the three-sigma trajectory passes over a facility for which the consequences of collision or unplanned impact would be extreme, such as a chemical or petroleum storage facility, the FAA may conclude that, as a matter of policy, it is unacceptable to approve the proposed mission *even though* it would satisfy mission risk and other safety criteria of part 431. When used as an early warning device, the policy review has proved a useful and efficient means of identifying impediments to licensing due to general safety considerations. Because RLV technology, other than Shuttle, remains in a developmental stage, the FAA is not able to catalogue the safety considerations that may attend proposed RLV mission operations. For this reason, the FAA believes it reasonable and prudent to expressly reserve the authority provided by a policy review to consider safety implications of proposed RLV flight. Having gained the benefit of twelve years of licensing experience with respect to ELV launches, the FAA no longer considers it necessary to expressly include safety policy considerations under the policy review performed in support of an ELV launch license.

ERPS asked when the FAA would advise an applicant of issues that would impede issuance of a policy approval and the FAA responds that it would do so upon obtaining responses from other Federal agencies reviewing a proposed mission or when the FAA, itself, identifies impediments to policy approval.

Section 431.25 Application Requirements for Policy Review

Section 431.25 of the final rule lists, in detail, the information requirements necessary for the FAA to perform the required policy review for an RLV mission license. Requirements include basic technical data concerning the pro posed RLV as well as foreign ownership interests in the applicant.

TGV commented that certain requirements seem more germane to a safety review than a policy review. Although the FAA agrees with TGV that technical data is needed as part of the safety review, the FAA requires certain basic information about a proposed mission in order to identify policy considerations that may result from use of vehicle systems, propellants, proposed flight trajectories and mission design.

USA expressed concern over the requirement to identify reentry sites, including planned contingency abort locations, if any. USA stated that provision for use of emergency landing sites should follow an aircraft operation model such that a vehicle could land at an alternate site within a prescribed range of safety parameters. The FAA agrees with USA insofar as a flight plan for an RLV mission may identify locations at which a vehicle may land in an emergency situation in a manner that poses minimal risk to public safety. For such emergency situations, reference is commonly made to ''landing in a cornfield'' or other unpopulated area. However, the requirement identified in the final rule is for identification of locations, if any, that would be used for a contingency abort. Such sites are pre-planned and their potential use may be identified as part of an application in order to meet mission risk criteria and are therefore separate and distinct from emergency abort landing situations.

Section 431.27 Denial of Policy Approval

The FAA would notify an applicant in writing if it has determined that it cannot issue a policy approval and provide the reasons for denial. The applicant may respond with additional information and request reconsideration of the FAA's determination.

Kelly suggested placing a time limit upon the policy approval process and early notification of issues. The FAA

disagrees with Kelly. The FAA anticipates that it would provide to an applicant early identification of issues that may impede issuance of a policy approval. However, other than the 180-day review period imposed by statute for agency review of an application, the FAA does not elect to impose additional time requirements upon processes for which it is often dependent upon other Federal agencies. The FAA reminds applicants that the 180-day time period for agency review of an application commences upon acceptance of an application and that an application is not accepted unless it is sufficiently complete in its entirety to enable the FAA to initiate the reviews and evaluations required for a licensing determination.

Section 431.31 General

This section of the final rule describes in a general manner the safety review performed by the FAA to determine whether an applicant is capable of launching and reentering, or landing, an RLV and payload, if any, from and to a designated site without jeopardizing public health and safety and the safety of property. A safety review entails a technical, engineering analysis of launch and reentry flight risks and is necessarily tailored to the unique capabilities of a proposed vehicle and characteristics of a proposed RLV mission. Safety approval is a necessary element of a licensing determination and the FAA informs an applicant, in writing, of any issue raised during a safety review that may result in denial of safety approval. The applicant has an opportunity to respond and revise its application rather than waiting for a final determination on its application.

ERPS and Kelly raised timing concerns comparable to those registered with regard to subpart B—policy review and approval. The FAA has, historically, consulted with an applicant on an ongoing basis when the agency requires additional information or clarification of a technical data submission in support of the safety review. A cooperative process, during pre-application consultation and while reviews are ongoing, is critical to ensuring the FAA has sufficient information to perform the reviews necessary for safety approval. The FAA intends to continue its interactive approach to technical reviews to facilitate licensing but does not impose a deadline upon itself for completion of the safety review other than the 180-day deadline imposed by statute for agency review of an application. Commencement of the 180-day timeframe is defined in the discussion of the policy review and approval necessary for an RLV mission license.

Section 431.33 Safety Organization

The NPRM proposed detailed requirements for an independent safety infrastructure maintained by an RLV operator in response to National Transportation Safety Board (NTSB) reports and the Rodgers Commission report that indicated independence is critical to an effective safety organization and safe transportation operations.

Under § 431.33(a), an applicant is required to document lines of communication and approval authority for public safety-related decisions. The common objective of maintaining lines of communication and approval authority is to ensure disciplined and appropriate communications and decisions during real-time to address public safety considerations. Compliance with regulations governing an applicant's communications plans is therefore a requirement for obtaining and maintaining an RLV mission license. As explained in the NPRM, decision authority over various aspects of an RLV mission, including authority to make a ''hold'' or ''go/no-go'' decision, may be dispersed among individuals and the personnel involved in executing an RLV mission must understand the role of each.

Section 431.33(b) directs an applicant to designate a person responsible for the conduct of all licensed RLV mission activities.

Section 431.33(c) mandates that an applicant identify a qualified safety official responsible for monitoring independently compliance by vehicle safety operations personnel with safety policies and procedures identified by the applicant in compliance with safety review requirements. The safety official must report directly to the person responsible under § 431.33(b) for RLV mission activities who, in turn, must ensure that the safety official's concerns are resolved before initiating the mission and before initiating return flight of the vehicle to Earth. In addition, the safety official would be responsible for conducting monitoring and evaluating operational dress rehearsals to ensure readiness of certain personnel and completing a mission readiness determination. The safety official is also responsible for compliance with mission readiness requirements, operational requirements and restrictions, and adherence by a licensee with representations made in its application.

Although the safety official bears great responsibility for safety-related decisions, as described above, the safety official need not perform that function solely. To relieve concerns over cost burdens, particularly for smaller companies, the FAA notes that the rules do not require that the safety official perform only those functions. The rules do require, however, that the safety official remain independent of other safety personnel.

NorthStar disagrees with the FAA dictating the internal organizational structure of an entity. NorthStar recommended that the reporting structure presented in the NPRM become a recommendation, rather than a requisite to licensing. The FAA does not accept NorthStar's recommendation. Based upon its experience in regulating aviation and launch operations, as well as NTSB safety recommendations, the FAA finds that an independent safety official that has direct access to the person responsible for the conduct of licensed activities can positively influence safety. Also, Federal Aviation Regulations codified at 14 CFR parts 1–198 require a part 121 certificate holder to have a qualified director of safety serving in a full-time capacity. *See, e.g.,* 14 CFR 119.65(a)(1). For comparable safety reasons, the FAA requires in the RLV mission licensing rules that an applicant identify a safety official who will report directly to the person responsible for the conduct of licensed activities to ensure that management adequately considers and addresses public safety concerns before initiating vehicle launch or reentry flight. Maintaining an organizational structure whereby safety issues will be raised to the attention of the responsible person enables safety-related decisions to be made at an appropriately high level rather than being submerged.

TGV sought a definition of the term ''qualified'' when used to describe the safety official. The FAA declines to impose specific educational and training requirements for an individual to function as a safety official under the final rule. Instead, an applicant would have to show that the individual is qualified to perform the required functions based upon the relationship between the individual's experience and responsibilities, which in turn may vary depending upon the operator's vehicle and operational concept.

The X PRIZE Foundation commented that for piloted vehicles, ultimate responsibility for operational safety decisions should reside with the pilot in command. The FAA has not ruled out the possibility that the safety official could be the pilot of the vehicle. Much like a mission flight safety officer for an ELV launch, the pilot would have

authority to make a decision to abort a mission or continue planned flight. As long as that individual maintains independence from other safety operations personnel in terms of decision-making, and is qualified to perform the designated responsibilities, the FAA accords an applicant discretion to determine which individual within its safety organization shall function as the safety official under requirements of § 431.33.

ERPS commented that the safety official identified in the NPRM should not be responsible for conducting dress rehearsals, but rather for ensuring that they occur and then monitoring them. The FAA agrees and the regulatory text is modified in the final rule to reflect the safety official's responsibility for monitoring and evaluating dress rehearsals to ensure that they are conducted in accordance with procedures identified in the license application. ERPS further stated that reentry readiness determinations should be the responsibility of the flight director, not the safety official. The FAA is concerned with functions, not titles, and will accept as compliant with the requirement the designation of an official qualified and authorized to perform the functions of the individuals described in § 431.33(b) and (c).

Section 431.35 Acceptable Reusable Launch Vehicle Mission Risk

Ensuring that acceptable mission risk is not exceeded is one of the principal means the FAA employs to fulfill its public safety mandate in licensing RLV missions. For purposes of satisfying mission risk criteria, only those risks to the public that may result during authorized vehicle flight, that is, launch or ascent *and* reentry or descent flight to Earth, are included as part of the risk calculation. For purposes of assessing mission risk, pre-flight ground operations and post-landing activities are not included in determining the expected average number of casualties, on a collective risk or individual risk basis, to the public exposed to vehicle and vehicle debris even though these are licensed activities.

The NPRM proposed two acceptable risk criteria that must be satisfied for an RLV mission as defined in § 431.35(a), that is, during authorized flight of an RLV. Under § 431.35(a), to qualify for safety approval, acceptable risk for the mission may not exceed a risk level of .00003 casualties per mission, or E_c criterion of $E_c \leq 30 \times 10^{-6}$, to members of the public.

The agency response to comments regarding application of a single risk measure to all licensed flight comprising an RLV mission is presented under the heading, ''Public Response to Three-Pronged Public Safety Strategy for RLV and Reentry Missions.'' In summary, Kelly endorsed the FAA's approach to combining launch and reentry risk associated with RLV flight thereby allowing an applicant to allocate risk to flight phases in its discretion. USA objected to a combined risk measure stating that launch and reentry should be treated as separate events. TGV also commented that launch and reentry should be licensed as separate events; however, TGV would apply an E_c of .00003 to each flight phase. Kistler objected to use of E_c altogether arguing that it is an unjustifiable assessment criterion, subjective and would stifle innovation.

In response to the comments previously noted in the discussion of mission risk and E_c calculation, the FAA has determined to limit RLV mission risk to public safety to a level considered acceptable for current launch capability, that is, $E_c \leq 30 \times 10^{-6}$, and allows an applicant flexibility to design a mission that satisfies the criterion.

In addition, the NPRM included a provision to ensure persons located in areas near a reentry site are not exposed to unacceptable risk. Under proposed § 431.35(b)(2), acceptable collective risk to persons within a 100-mile distance from the border of a designated reentry site, including a pre-planned contingency abort location, shall not exceed a risk level of .000001 casualties per mission, or E_c criterion of 1×10^{-6}. The FAA included the additional criterion in the interest of limiting public risk exposure should a minor system failure cause an off-site, but not random, landing on Earth. A similar standard was applied to the COMET/METEOR reentry vehicle proposal to ensure that risk exposure of the population within the vicinity of a landing site would not exceed normal background risk as a result of planned reentry.

Eight entities commented in opposition to the proposed requirement that would impose additional restrictions upon reentry. Included among the objections were complaints that the criterion would not be feasible to satisfy, is not necessary or appropriate for guided RLVs or reentry vehicles, appears to place greater value on population near a reentry site than elsewhere, and imposes separate standards for launch and reentry when a single expected casualty criterion for the mission would suffice. Space Access offered, as an alternative, that the additional restriction on RLV reentry be applied only to unproven RLVs. ERPS suggested that designation of a 100-mile area is an arbitrary measure and that when applied in combination with population overflight criteria for an unproven vehicle that assumes an absolute probability of failure while the IIP is over a populated area, would disqualify the Shuttle from licensing assuming existing Shuttle landing strips are the designated reentry sites.

The FAA has reconsidered the proposed requirement limiting collective risk to persons located within 100 miles of the border of a reentry site. As an alternative, the FAA considered acceptable risk measures utilized by Federal ranges to ensure that population within the vicinity of a Federal launch range are not exposed to unacceptable risk. Federal ranges apply an individual risk standard to address this safety concern. Under Air Force Eastern and Western Range Safety Requirements, EWR 127–1, the risk of a casualty to any individual cannot exceed one in a million launches, or $E_c \leq 1 \times 10^{-6}$ for the mission. Individual risk is different than collective risk. Individual risk measures the risk to a single person in the exposed population, whereas collective risk measures the sum total risk, or the probability of injury or death, to that part of the public exposed to an event. An individual risk measure is utilized to address circumstances under which certain people may be exposed to risk, such as where a single dwelling exists along a vehicle trajectory. Application of an individual risk measure for persons residing within the dwelling would dictate whether or not it must be evacuated for launch or reentry activity along that trajectory to occur safely.

Upon reconsideration of the additional safety requirement, the FAA has determined that application of the Air Force standard for individual risk, in combination with the final rule criterion for acceptable collective risk for the mission ($E_c \leq 30 \times 10^{-6}$) accomplishes the regulatory objective of ensuring that persons in the vicinity of a reentry site or designated landing location for an RLV or reentry vehicle are not exposed to greater than normal background risk. Accordingly, § 431.35(b)(2) is revised in the final rule by removing all reference to a 100-mile distance from the designated reentry site. In its place, the final rule limits individual risk of a casualty to 1×10^{-6} for any person not involved in the licensed activity.

Section 431.35(c) requires that an applicant demonstrate acceptable risk using a system safety process to identify hazards and mitigate risks to public

health and safety and the safety of property. To be acceptable, the system safety process employed must identify and assess reasonable reasonably foreseeable hazardous events and failures of safety-critical systems during nominal and non-nominal launch and reentry that could result in a casualty to the public, that is, someone not involved in the mission. ACTA commented that the term safety-critical is potentially quite broad and should be limited to identifying those systems that have direct potential effects on public safety. The FAA agrees and has modified the regulatory definition of the term ''safety-critical'' in the final rule. By referring to failures that could result in a casualty to the public, the FAA intends to refer to public safety-critical systems. FAA Advisory Circular, AC No. 431.35–2 , defines a safety-critical system as one whose performance or reliability can affect public health and safety and the safety of property.

Other comments regarding use of a safety system process are discussed above under the discussion of the FAA's three-pronged strategy for RLV mission safety.

Section 431.35(d) lists the requirements that must, at a minimum, be covered by an applicant's demonstration of acceptable risk using a system safety process. These include a description of physical characteristics of an RLV, identification of hazardous materials on the vehicle, a description of safety-critical systems and safety-critical failure modes and consequences, and a timeline identifying safety-critical events. Section 431.35(d)(7) of the proposed regulations would require an applicant to provide data that validates its system safety analyses. USA commented that validation requirements and the methods and standards used for such validations should be defined by the FAA. To some extent, the data that would be used to validate a particular analysis is dependent upon the system safety process selected by an applicant and is therefore not dictated by regulations. FAA Advisory Circular, AC No. 431.35–2, provides additional guidance on the nature of the documentation that would be required. For example, it provides that documentation must show adequate design, proper assembly, and vehicle control during all flight phases, and is expected to consist of design information and drawings, analyses, test plans and reports, previous program experience, and quality assurance plans and records. As part of the licensing process, the FAA would consider the nature of the system safety process selected by an applicant, which in turn would determine the methods of validation and documentation that flow from the process. For this reason, the FAA does not define, in the final rule, particular methods and standards that must be utilized to validate system safety analyses.

ERPS commented that the section-by-section analysis of the NPRM refers to empirical data for purposes of validating the required system safety analyses, which in turn would require a flight test program, according to ERPS. The regulatory text of the NPRM contains no reference to empirical data. However, the FAA would welcome empirical data if it exists, such as that acquired through ground testing of systems, but would not require a flight test program under the final rule. No change is made in the final rule on the basis of the ERPS comment.

Section 431.35(d)(8) requires flight trajectory analyses covering launch or ascent and reentry or descent flight of an RLV through landing, including three-sigma dispersion of the vehicle along its trajectory. Comments addressing the three-sigma dispersion of an RLV are addressed above in the discussion of public comments addressing operational restrictions proposed for RLV mission licensing. The FAA further notes the value of trajectory dispersion modeling for purposes of analyzing the consequences on the ground or to aircraft in flight of vehicle failure. For this reason, the FAA anticipates that prospective RLV operators would perform the modeling contemplated by the final rule and include risk-producing events and consequences within the three-sigma limits along a nominal flight trajectory to the designated reentry site or landing location and would likewise do so for any non-nominal trajectories identified in advance of an RLV mission.

Section 431.37 Mission Readiness

Section 431.37 specifies procedures for verifying mission readiness for the conduct of an RLV mission. Mission readiness procedures must be employed before initiating launch or ascent flight and before reentry or descent flight, as applicable. Procedures for determining readiness of safety operations personnel for the vehicle as well as personnel and services at the launch and reentry site must be covered. Procedures must also ensure that mission rules and abort procedures are consolidated in a single location and approved by the individual responsible for the conduct of the RLV mission, checklists maintained by the licensee and the launch and reentry site operator are current and consistent so that all involved participants share common understanding of the mission, dress rehearsals will verify crew readiness and readiness of other participants in the RLV mission and that criteria for dispensing with or adding dress rehearsals are specified, as well as adherence to crew rest rules.

TGV expressed agreement with the intent of mission readiness requirements and procedures, as proposed; however, to relieve industry of the resulting burden TGV proposed that the FAA supply a designated engineering representative (DER) as a substitute for submission of procedures and reports. An on-site DER could also approve modifications to procedures and checklists without the need and the time required for formal submission of changes to the FAA, according to TGV. DERs have been used successfully by the FAA in aircraft certification.

The FAA does not agree that use of a DER would relieve an applicant of paperwork and reporting burdens because the applicant, not the FAA, must develop the procedures by which it will determine and verify mission readiness. Although on-site approval authority is an appealing means of facilitating license application modifications, the FAA believes that experience in RLV operations should be gained by the FAA and industry before employing such concepts. That said, the FAA is considering the best means of identifying and applying processes that will facilitate licensing, including RLV mission and reentry licensing, and does not rule out future use of proven, successful concepts in doing so.

Kelly and ASTi objected to continuing requirements for the conduct of dress rehearsals. Kelly expressed the view that rehearsals should only be required as a special circumstance, such as during a flight test phase or after a significant vehicle modification. ASTi commented that the requirement should be reduced to a recurring training requirement as a system matures. ERPS commented that the requirement to provide a basis for doing away with a dress rehearsal was intrusive and that a licensee should be allowed to rehearse every mission at its own election.

Based upon experience, the FAA considers that dress rehearsals are valuable tools for identifying lack of individual or system readiness and therefore requires that mission readiness procedures cover them. However, dress rehearsals may not be necessary for all missions. The criteria by which an applicant proposes to dispense with a dress rehearsal must be identified as part of an application and reviewed by the FAA for sufficient consideration of potential effects on public safety, as part

of the FAA's safety review. Through this requirement, the FAA and applicant would share a common understanding of the number and complexity of dress rehearsals to be conducted in support of a particular mission and that understanding would become a stated condition of an RLV mission license. ERPS's concern is misplaced, however, in that the FAA would not object to the conduct of one or more dress rehearsals before *every* mission proposed by an applicant.

Section 431.39 Mission Rules, Procedures, Contingency Plans, and Checklists

The FAA's experience in licensing and regulating ELV launches has demonstrated the importance to public safety of requiring that an applicant compile missions rules, procedures, checklists, and contingency plans, in a single volume, to ensure safe conduct of mission operations. Because RLV missions are comprised of launch or ascent flight and reentry or descent flight, additional personnel may be involved in a mission than those typically required for an ELV launch, such as a reentry site operator that is not necessarily the launch site operator for the mission. Accordingly, the requirement to assure consistency in and common understanding of such safety-critical elements as mission rules, procedures and checklists among involved participants for nominal and non-nominal flight takes on heightened importance from a public safety perspective. The FAA requires submission of such rules and plans to ensure a licensee's procedures are carried out as proposed in an application and reviewed and approved by the FAA as part of the safety review.

USA expressed concern that such documents as mission rules and procedures would not be finalized at the time an RLV mission license application is submitted to the FAA. Given that material changes in an application must be reported to and approved by the FAA for a licensee to retain its authorization, USA requested clarification of what would constitute a material change in such submissions.

The FAA recognizes that launch plans evolve during pre-application consultation, throughout the application review period, and after a license has been issued. As an applicant constructs its application, the FAA may require additional information pertaining to a data submission or the applicant may revise its vehicle or mission design and submit revised information. An analysis previously considered by the agency may require further refinement later in the review process if, for example, test results challenge assumptions that form the basis of the analysis. Ongoing consultation is necessary to build the complete application upon which the agency's licensing determination is based and it is therefore not unusual for an application to be finally deemed complete at the point at which the agency's review is nearly concluded. Throughout this process, the FAA is able to review and act upon proposed modifications promptly and efficiently as long as it has been kept informed and involved during the development of the final application.

Once a license has been issued, the licensee has a continuing obligation to report proposed changes from representations contained in an application that are material, that is, that may affect public safety. For RLVs, the FAA expects that an applicant would make changes to mission rules and procedures and the like from that initially submitted as part of an RLV mission license application because its operational concept as well as mission hardware may undergo continuing modification until proven or mature. Mission rules, checklists and other plans and procedures identified in § 431.39 are required under the final rule because of their potential effect on public safety. It is therefore reasonable for an applicant or licensee to anticipate that any change to such documents would be deemed a material change by the agency. The FAA encourages applicants and licensees to consult with the FAA to determine whether a proposed change may affect public safety and would therefore be considered a material change.

Section 431.41 Communications Plan

Section 431.41of the final rule requires submission of a communications plan binding upon vehicle safety operations personnel during the conduct of an RLV mission. It must contain procedures for issuance of safety-critical information during the mission and describe the authority of vehicle safety operations personnel to issue commands. Personnel may be identified by name or position. The required communications plan resembles that currently required for licensed ELV launches in the following ways. Communication networks must be assigned such that safety operations personnel have direct access to real-time and safety-critical information required for making safety-related decisions during the mission and issuing commands. Safety-critical communications are monitored by vehicle safety operations personnel on one, pre-determined common intercom channel during launch and reentry including the countdown for launch and reentry flight. Also, a terminology protocol must be utilized. Safety-critical communications during the mission must be recorded.

Boeing commented that the requirements for a communications plan proposed in the NPRM did not address interface with air traffic controllers. The final rule includes a provision for coordination with air traffic control regional offices but does so as a condition of an RLV mission license. Section 431.75(b)(2) of the final rule requires that the licensee and the FAA regional office with jurisdiction over the airspace through which a launch and reentry will take place establish procedures for issuance of notices to airmen prior to flight, closing of air routes and other measures deemed necessary by the FAA regional office.

ERPS sought clarification as to whether communications plan requirements apply to an RLV while it operates on orbit. The requirements listed in § 431.41 apply to licensed operation of an RLV and would apply to launch and reentry of the vehicle inclusive of pre-flight activities such as countdown or preparation for launch flight and countdown or reentry readiness operations before reentry flight. They would not apply to on-orbit operation of an RLV that is not part of launch or reentry.

ERPS also sought clarification on the form of recording that would be acceptable to the FAA. The reason for recording communications is to have the ability to recreate or play back transmissions in the event of an anomalous circumstance requiring investigation or prevention analysis. The NPRM did not specify how that may be accomplished, or the format for doing so, as long as the intended purpose can be achieved. A single recording device may be used or an applicant may propose to use multiple devices or tracks with synchronized time signals. The FAA understands that it is common practice in the launch industry to rely upon several communications channels, each of which is dedicated to a particular subject area, and the FAA would find it acceptable practice to record channels separately as long as the timing and sequence of communications can be reconstructed. For example, where multiple channels are utilized, recording practices are adequate if individual channels are recorded separately and synchronized time coding is employed. Time coding and adherence to the communication

protocol would also be particularly important where a single recording is made of all communications on various channels. The final rule clarifies the requirement. Adequacy of an applicant's proposed method of assuring that safety-critical communications are recorded accurately and in a meaningful manner will be evaluated by the FAA as part of the safety review.

NorthStar commented upon the need for communications system reliability and backup systems if needed. System reliability will be a factor considered by the FAA in evaluating the adequacy of an applicant's proposed method of recording communications to accomplish its intended purpose. However, where a communications system is integral to proper performance of a flight safety system and therefore safety-critical, reliability will be evaluated through hazard identification and risk assessment required under § 431.35(c). Also, mission rules and procedures would address non-nominal performance of safety-critical systems and implementation of contingency plans.

ASTi sought clarification of the reference in § 431.41 to safety operations personnel because it suggests the responsibilities of a ''pilot in command.'' ''Vehicle safety operations personnel'' is a defined term under § 401.5. It means those persons whose job performance is critical to public health and safety or the safety of property during RLV or reentry operations. Therefore, it is not limited to a pilot or crew on board a vehicle although it may include them. Vehicle safety operations personnel would include persons monitoring, enabling and otherwise controlling vehicle performance during licensed activity from ground stations.

Section 431.43 Reusable Launch Vehicle Mission Operational Requirements and Restrictions

Section 431.43 contains the operational restrictions imposed by the FAA on RLV mission flight. An applicant for an RLV mission license must submit procedures that ensure conformance by an RLV operator with those restrictions once a license has been issued. Upon issuance of a license, a licensee is responsible for conducting authorized RLV missions in accordance with procedures it submitted as part of the safety review.

In addition to operational restrictions highlighted in the discussion of the FAA's three-pronged public safety strategy for RLV missions, § 431.43 of the final rule requires a collision avoidance analysis to prevent contact with any inhabitable orbiting object during launch and reentry, such as the Shuttle or International Space Station. It also prescribes crew rest requirements which may be increasingly significant for RLV operators whose personnel may support multiple flight phases of a mission and long duration missions, unlike ELV launches. The work and rest standards adopted in the final rule are similar to those currently used at Federal launch ranges and imposed on commercial ELV launch operators by FAA regulation.

Section 431.43(a) requires submission of procedures that ensure acceptable mission risk, as defined in § 431.35, is not exceeded for nominal and non-nominal operations. The FAA does not prescribe design-based standards for ensuring operations remain within the acceptable risk criteria. An applicant may design procedures best suited to its operational concept and technology for doing so. Operator procedures would be derived from the system safety process utilized by an applicant and, in particular, the hazard identification and risk analysis performed in accordance with § 431.35(c) to address nominal and non-nominal operation and flight of an RLV. Under § 431.43, an applicant must submit procedures that ensure conformity with system safety process results. Procedures must also ensure conformance with operational restrictions identified in § 431.43, including collision avoidance analysis, debris mitigation, crew rest requirements, limitations on overflight of populated areas, monitoring safety-critical systems for safe reentry and enabling of reentry.

Section 431.43(a)(4) of the NPRM is revised in response to comments received concerning monitoring of safety-critical systems. The proposed requirement would compel procedures for monitoring and verifying the status of safety-critical systems immediately before and during missions operations.

For some RLVs, it will not be practicable to monitor systems throughout licensed operation of an RLV. Some RLVs and reentry vehicles will confront black-out periods during reentry flight during which it will not be feasible to obtain telemetry data. For some orbital RLV concepts, the FAA envisions that telemetry would be available only at certain times or for certain orbital positions during an orbit. Design and performance factors for specific RLVs will necessarily determine which systems are safety-critical and can influence monitoring and verification procedures. The FAA modifies the proposed requirement in the final rule to more effectively accommodate individualized procedures. Nevertheless, procedures requiring monitoring and verification of safety-critical systems must ensure safe reentry and an applicant's procedures must therefore make provision for performing such public-safety related functions prior to enabling launch and again prior to enabling reentry flight of a vehicle.

Section 431.43(a)(5) of the final rule retains the requirement proposed in the NPRM and reflected in draft interim safety guidance for RLV operators for human activation or initiation of a flight safety system that safely aborts an RLV launch if the vehicle is not operating as approved and acceptable risk standards for an RLV mission would be exceeded. A flight safety system is broadly defined in § 401.5 of the final rule to mean a system designed to limit or restrict the hazards to public health and safety and the safety of property presented by a launch or reentry vehicle in flight through controlled ending to vehicle flight. It may be destructive, such as a flight termination system (FTS) traditionally employed on ELVs to terminate flight by breaking the vehicle apart, or nondestructive, such as an engine thrust termination system that enables intact landing.

Vela disagreed with a statement in the supplementary information in the NPRM to the effect that the RLV industry has agreed that some type of flight safety system (FSS) would be necessary to satisfy Federal range safety requirements. Vela commented that an FTS would never be used on an RLV and believes that RLVs will launch from locations other than a Federal range. The FAA disagrees with Vela. The FAA reiterates that the regulatory requirement in issue is for use of an FSS that may or may not be destructive. Vela plans a passenger-bearing vehicle and, in all likelihood, would employ an FSS that allows for controlled landing in the event of an aborted launch. Other RLVs may employ multiple stages, including an expendable booster that may indeed rely upon a destructive FTS, much like the solid rocket boosters of the Shuttle.

A number of comments were submitted addressing the proposed requirement for a ''human-in-the-loop'' and the FAA proposal to foreclose total dependence on a fully autonomous abort system. Kistler and ACTA objected that requiring a human-in-the-loop and disallowing autonomous systems would limit innovation and increase costs of development. Autonomous systems should be considered on an individual basis, they stated. Lockheed Martin pointed out that current ELV practice allows for autonomous control of some

critical activities, such as ignition of an upper stage. Comments offered by industry on the draft interim safety guidance for RLVs and in the COMSTAC report of the RLV working group varied on the degree of human control that should be required and whether human intervention may only be required during flight testing. Space America pointed out, in response to the draft interim safety guidance for RLVs, that human intervention does not necessarily decrease risk. Space Access also stated that human intervention is required but that qualifications should be better defined. Several RLV developers planning crewed vehicles suggested that a requirement for human intervention would be fulfilled by a pilot in command of the vehicle.

In response to the comments, the FAA acknowledges that autonomous flight safety systems are technically feasible and has allowed total reliance on an autonomous FTS where risk to public safety is extremely low. In requiring human intervention capability for activation of an FSS the FAA does not intend to foreclose development or use of autonomous systems. The FAA also does not intend that autonomous decision-making would be foreclosed. However, the FAA does consider that total reliance on a fully autonomous system to assure RLV safety to the public is unwarranted until a greater level of confidence in such systems can be obtained and accordingly requires that capability exist for a person to intervene and make decisions for FSS activation. Two recent studies by the National Research Council Committee on Space Launch Range Safety and a Lockheed Martin technology demonstration for a new range safety system substantiate the technical feasibility of autonomous flight safety systems. However, concern remains within the government that the demonstration of such systems at the requisite level of confidence remains some time away. A 1999 failure of autonomous flight return and flight safety systems on a Perseus B drone aircraft illustrates the benefits of human intervention capability in the event an autonomous system does not perform as intended. When the autonomous flight return system and manually commanded FSS failed, having human control allowed the Perseus B's controllers to move the vehicle away from a densely populated area before total command was lost during the last few thousand feet of descent through landing on Interstate 40 in California. For such reasons, NASA and its industry partners involved in X–33 and X–34 technology demonstration programs use human-in-the-loop flight termination systems to ensure public safety, even though the vehicles are autonomous during nominal flight.

The FAA supports the continued development of autonomous flight safety systems but does require, for the present, human intervention capability to assure public safety and in doing so makes no distinction in the final rule between test flights and operational flights. Autonomous navigation of RLVs combined with human intervention capability to verify safety-critical system status and override or redirect automated functions would be allowed under the final rule. No change is made in § 431.43(a)(5) of the final rule from that proposed in the NPRM.

Section 431.43(b) of the final rule imposes the requirement that an applicant for an RLV mission license identify nominal landing and vehicle staging impact or landing areas, if any. Also, if an applicant relies upon the ability to attain one or more contingency abort locations during launch or reentry in order to satisfy acceptable risk criteria of the final rule, they must be identified as part of the safety review process as well.

For each location identified, the FAA would deem it suitable for purposes of launch or reentry safety if, in addition to any environmental consequences that must be assessed, the three-sigma dispersion of the vehicle or vehicle stage can be contained entirely within the designated location and it is sufficiently large as to contain landing impacts, including debris and toxic release. The applicant would also have to demonstrate to the FAA that a designated location is attainable by its vehicle. ACTA commented that based on X–33 and other RLV designs, the availability of excess energy that would be needed to maneuver cross-range to attain a contingency abort location is usually limited making aborts on azimuth more likely. If that is so, an applicant could show capability to perform on-azimuth aborts through analyses, simulation or testing. Other contingency abort scenarios may include a return to the launch site, an abort to orbit although not the intended final orbit, and abort to an unpopulated downrange location, such as a broad ocean area. An applicant would therefore have to demonstrate that its vehicle can be maneuvered to a designated landing area given the set of three-sigma bounded trajectories for a proposed mission and under the failure modes for which that location would be utilized. Vehicle stages, including those that fail to ignite or that otherwise operate in non-nominal fashion, must also satisfy the three-sigma dispersion criterion contained in § 431.43(b) upon impact or landing and the risks that attend staging impacts would be considered part of the mission assessed against acceptable mission risk criteria set forth in § 431.35(b). Comments on size suitability of a landing location designated under § 431.43(b) were addressed in the discussion of public comments on the FAA's three-pronged public safety strategy in RLV mission licensing.

Draft interim safety guidance for RLVs issued by the FAA and made the subject of the February 11, 1999 public meeting included as a safety objective the notion that an RLV operator would necessarily designate pre-planned, pre-approved abort landing sites that avoid air traffic areas along the intended flight corridor for the vehicle during all flight phases. Industry voiced objections to the requirement based upon feasibility and cost of compliance particularly if each such site had to be evaluated for environmental impacts, and stressed that meeting the expected casualty criteria for acceptable risk to public safety should be sufficient. Careful consideration by the FAA of industry concerns resulted in the approach proposed in the NPRM and adopted in the final rule, requiring designation by an applicant of contingency abort locations only if it is necessary to do so in order to satisfy the acceptable risk criteria of the rule. Consistent with the NPRM, the final rule does not require designation of a contingency abort location for all missions or for all phases of a proposed mission; however, an applicant would have to show that an uncontrolled random reentry (*e.g.*, due to orbital decay) will not exceed acceptable risk criteria for the mission. Except where reliance on a contingency abort location is necessary to demonstrate that acceptable risk criteria for the mission will not be exceeded, discretion is left to an applicant for an RLV mission license to determine whether to select, in advance of a mission, an alternative location within which to land a vehicle during ascent or descent flight.

Orbital Sciences asked for clarification of the reference in § 431.43(b) to a contingency abort location and whether it would be regulated as a reentry site. The final rule defines a contingency abort to mean cessation of vehicle flight during ascent or descent, in a manner that does not jeopardize public health and safety and the safety of property, in accordance with mission rules and procedures. Cessation of vehicle flight may be done

through destructive or non-destructive means. The definition further provides that contingency abort includes landing at an alternative location that has been designated as a contingency abort location in advance of vehicle flight. A contingency abort location may be a reentry site operated by a non-Federal entity under an FAA license or a location for which an RLV operator is allowed access, by agreement with the owner, as long as its suitability for use by an applicant is evaluated as part of RLV mission licensing. A contingency abort is not limited to reentry and may occur during any flight phase of an RLV mission. A pre-selected contingency abort location would be evaluated as part of the environmental review required for a proposed mission, as explained in the discussion pertaining to § 431.93 of the final rule.

Similarly, Space Access commented on the need to differentiate between a reentry site and a landing site. Although commenters may refer to a landing site in commenting upon the location at which a reentry vehicle may land, this final rule uses the term ''reentry site'' as defined in § 401.5.

Vela also asked for clarification of what is meant by a landing site asking, hypothetically, whether it would be all area within the restricted boundary of Los Angeles International Airport. The designated location for landing an RLV, whether it be a reentry site or designated contingency abort location, would cover all restricted area within which the three-sigma dispersion of a vehicle may occur for purposes of assessing size suitability. Where, for example, debris or toxic fumes may be dispersed upon landing, an applicant would also have to show that the restricted area is sufficiently large and removed from public access as to contain the three-sigma dispersion area for the vehicle at all landing points. To accomplish this result at an airport, an applicant may demonstrate that its vehicle can land on a designated runway with the required level of predictability and that the restricted area of the airport is sufficiently large as to contain the vehicle and any toxic emissions within its boundary should the vehicle touch down at any point within the three-sigma dispersion area of the vehicle.

Section 431.43(c)(1) requires a collision avoidance analysis to assure a 200-kilometer separation of an RLV from any inhabitable orbiting object during launch and reentry and defines launch window closure requirements. Some questions were raised in the comments as to who would perform the analysis and how it would be performed. Timing of the analysis was also raised in the comments to address dynamic scheduling demands of RLV launches and reentries.

The FAA maintains a memorandum of agreement with U.S. Space Command to facilitate the conduct of collision avoidance analyses required for launch activities. Currently, only ELV launches require a collision avoidance analysis which can generally be performed in advance of a launch based upon a stable, scheduled date or dates for launch. The FAA understands that for RLVs, there is greater uncertainty in scheduling a reentry event because of the potential need to complete additional orbits before reentry readiness is confirmed. Yet, just as aircraft file a flight plan to operate in the National Airspace System and avoid collision with other aircraft, RLV reentries must be coordinated to assure no collision occurs on orbit with inhabited orbiting objects. The FAA is engaged in discussions with U.S. Space Command on how best to accomplish collision avoidance analyses and has specified in this and other regulations only that it be performed, without designating the point of contact for an applicant. The collision avoidance requirement is included in this final rule to alert RLV operators to the need for such an analysis for every launch and reentry. Means of complying with the collision avoidance requirement may be supplied in advisory material prepared by the agency or through future rulemaking.

Lockheed Martin noted in its comments that it intends to address space station servicing as part of its commercial launch services market and may require the ability to do so on a first orbit, contrary to rule restrictions. Lockheed Martin recommends adding an exception to this final rule to address circumstances in which the inhabited orbiting object is the intended destination for a launch. A docking maneuver would not be considered licensed activity under this final rule. Although the requirement for a collision avoidance analysis is directed at avoiding such contact during licensed launch and reentry operations, the FAA declines to adopt Lockheed Martin's recommendation for the time being preferring instead to consider granting a waiver to the restriction on an individual basis to assure that safety considerations are not compromised.

Section 431.43(c)(2) prohibits, for any RLV, substantial dwell time by its IIP over densely populated area during any segment of mission flight. Comments directed at this restriction were addressed in the discussion of public comment on the FAA's three-pronged public safety strategy for RLV missions and the interested public is referred to that discussion.

A requirement to minimize debris generation in the space environment has been part of FAA launch licensing regulations for the past year. Despite a comment from Kelly that the rule is too directive, the final rule imposes a comparable requirement on RLV missions to ensure that debris risks are mitigated. Debris propagation would interfere with other RLV missions, as well as ELV launches and satellite operations in space. To minimize that possibility, § 431.43(c)(3) prohibits unplanned physical contact between a vehicle and its components and payload after payload separation. The final rule also prohibits debris generation from conversion of energy sources into energy that would fragment the vehicle or its payload. ELV operators are capable of complying with this requirement and the FAA finds it prudent to extend it to RLV operators as well, although RLV operators may utilize means other than those typically applied to ELVs to comply with the requirement. The final rule alerts prospective RLV operators to the debris mitigation requirement sufficiently early in RLV design and mission planning as to minimize any burden of compliance with its terms.

The crew rest requirements presented in § 431.43(c)(4) of the NPRM prompted two comments. B–G stated that it would not object to applying the proposed requirements to the crew on a piloted vehicle if it were made clear that the rest required could take place aboard the vehicle. The FAA intends the crew rest requirements proposed in the NPRM to apply to all vehicle safety operations personnel wherever located and does not specify in the final rule where required rest must take place. The FAA concurs with B–G's observation that rest may take place while on board a vehicle. ASTi suggested using aircraft crew rest requirements for ground and flight crew. Crew rest requirements contained in the rule are similar to those imposed by the Air Force for Federal launch ranges and have proven effective in accomplishing their public safety objective. Accordingly, the FAA adopts those requirements for RLV operations in the interest of public safety preservation. As already noted, the FAA will separately consider additional human factors for crewed and passenger-bearing vehicles in a future rulemaking.

Section 431.43(d) provides population overflight restrictions applicable only to

unproven vehicles.[8] In an October 8, 1998 letter from AST's Associate Administrator to the COMSTAC, the FAA requested input from the RLV working group on, among other things, criteria for defining the types of test flight programs required to allow overflight of populated areas by RLVs during launch and landing and criteria for transitioning from a flight test program to an operational program. Subsequently, the FAA issued draft interim safety guidance for RLVs and convened a public meeting to address safety objectives that included avoidance of overflight of densely populated areas and a test flight demonstration program demonstrating abort and recovery capability before allowing substantial overflight of populated areas.

Intended as a starting point for development of an RLV licensing process between government and industry, the April 29, 1999 ''Draft Final Report on RLV Licensing Approaches'' (COMSTAC report) adopted by the COMSTAC at its May 1999 meeting reflects some working group areas of consensus; however, additional views expressed by individual working group members were included in the report. With regard to a test flight program, the COMSTAC report defined a test flight, supported RLV mission licensing involving overflight of a populated area following successful completion of a flight test program and demonstration of acceptable risk in accordance with a licensing plan, and would allow multiple flights comprising a flight test program under a single license. The COMSTAC report also reflects the RLV working group view that a system may be declared operational after successful completion of its flight test program in accordance with the licensing plan and that prudent exploration of the design envelope ultimately yields a fully operational system approved for flight in all regions of its design envelope. The COMSTAC report is included in the docket for this rulemaking.

Objections voiced by RLV developers at the February 1999 public meeting regarding requirements for flight testing prompted the FAA to exclude from proposed regulatory requirements the need to conduct a flight test or demonstration program before commencing operational missions. Supplementary information accompanying the NPRM explains that the FAA considered but discarded the requirement for a flight test regime, a distinct change from the approach considered in draft interim safety guidance. However, the NPRM distinguishes between flight restrictions for ''unproven'' RLVs and all RLVs. Among other things, an ''unproven'' RLV would not be allowed to fly over a densely populated area.

The term ''proven'' does not appear in the regulatory text. The agency explained that it was not proposing criteria, such as the number of flights required, to determine the point at which a vehicle transitions from ''unproven'' to ''proven'' noting that the point of demarcation may depend upon unique characteristics of a vehicle. In the NPRM, the FAA explained that flight data would be necessary in order to validate an operator's risk analysis and show that the vehicle performed as assumed in the risk analysis. The FAA further explained that the number of flights necessary to validate a vehicle's risk analysis would depend, at least in part, on the severity of risks to public safety posed by the nature of operations the vehicle would be expected to perform under an applicant's proposal. The example cited in the NPRM addressed reliance upon abort capability as a basis upon which the FAA would allow flight by a ''proven'' vehicle over a populated area. Because the consequences of failure would, in all likelihood, violate acceptable risk criteria for the mission, the applicant would be required to demonstrate a sufficiently low probability of failure to satisfy the criteria. It should be noted, however, that the final rule does not require demonstration of abort and recovery maneuvers.

An operator may find it desirable to conduct a flight test program, to gain confidence in system performance and reliability that may not be attainable through ground testing and simulations. Even those operators and RLV developers whose designs include subsystems and components for which there exists some performance data may determine that it is useful to perform test flights in order to gain data regarding use of components in a new flight environment or in combination.

The FAA requested views on appropriate means of validating new vehicle performance and criteria for determining the point at which a vehicle may be considered ''proven.'' Unfortunately, no specific criteria were offered in the docketed comments to assist the FAA in differentiating a ''proven'' RLV from an ''unproven'' one. Instead, industry comments focused upon the difficulty of satisfying the operational restrictions proposed for RLV flight over populated areas. Several suggested that satisfying acceptable risk criteria for an RLV mission should be sufficient. Others suggested using FAA regulations covering experimental aircraft as the basis upon which flight tests may be authorized, that is, without reference to expected casualty criteria.

The FAA continues to maintain that it is inappropriate to draw a bright line between ''unproven'' and ''proven'' RLVs for purposes of defining operating restrictions. Without flight data, the FAA does not believe that sufficient confidence can be placed in the results of risk analyses to warrant exclusive reliance upon an analytical demonstration of acceptable risk criteria or a system safety assessment. The FAA retains flexibility in the final rule to evaluate RLV concepts on an individual basis and consider flight data submitted by an applicant to validate risk analyses performed as part of the system safety process required under the regulations. Moreover, proven performance within an approved flight envelope would not signify that an RLV is ''proven'' for all flight purposes. Modifications in design and expansion of the performance envelope for successive RLV missions must be considered by the FAA in issuing a safety approval and possibly relieving operational restrictions.

The FAA maintains restrictions on ''unproven'' RLVs as distinct from all other RLVs in the final rule. The FAA does so with the understanding that there currently exists no commercial RLV eligible for ''proven'' status because commercial RLVs have yet to be tested, much less operated. The agency anticipates that future rulemaking may modify these distinct requirements as RLV concepts become operational. In the near-term, the FAA would evaluate, on an individual basis, whether an RLV's performance is sufficiently reliable to allow flight over a densely populated area because risk to public safety is sufficiently remote.

Although a flight test program is not required in the final rules, an applicant may utilize a flight test program as part of its proposed plan of operation and, through consultation with the FAA, obtain safety approval to operate within, or up to, a specified performance limit and also to make adjustments in non-safety-critical vehicle systems without requiring advance approval from the FAA beyond that already granted by the license. Adjustments that do not affect public safety or the safety of property would not require amendment of an application or of a license. A more complete discussion of matters requiring more formalized FAA approval appears in the discussion of

[8] Comments on these restrictions are addressed above in the analysis of public comment on the agency's three-pronged public safety strategy for RLV missions.

§ 431.73—''Continuing accuracy of license application; application for modification of license.'' Further demonstrations of performance and validating data would contribute to the basis upon which the FAA may approve increases in the approved flight envelope for successive missions.

Comments regarding restricted population overflight by RLVs are addressed in the discussion of the agency's three-pronged public safety strategy for RLV missions.

For RLVs that reenter from Earth orbit, § 431.43(e) of the final rule directs that for reentry to occur, the operator or licensee must be able to monitor the status of safety-critical systems before enabling reentry flight and thereby verify that the vehicle can reenter safely and issue a command to enable reentry. Comments regarding monitoring requirements and human intervention to enable reentry are also addressed above as part of the operational restrictions on RLVs that the FAA imposes to assure RLV mission safety to the public. As noted above, it may not be necessary to monitor safety-critical systems immediately before reentry flight commences in order to assure reentry safety. Verification of vehicle status and position one or more orbits before reentry flight is planned may be sufficient to assure safe reentry. Accordingly, the FAA modifies this section of the final rule by removing the word ''immediately'' from the requirement in § 431.43(e)(1) of the final rule and has made nonsubstantive changes for clarity.

Section 431.45 Mishap Investigation Plan and Emergency Response Plan

Section 431.45 requires submission of a mishap investigation plan (MIP) that satisfies reporting requirements and provides procedures for cooperating with an FAA and National Transportation Safety Board (NTSB) investigation, and an emergency response plan (ERP) for notification of local officials and information dissemination to the public. As crafted in the NPRM, launch-related information for a MIP covering an RLV mission was outlined in § 415.41 of the FAA Licensing Regulations, 14 CFR 415.41, and an applicant was referred to that section for additional requirements in preparing a sufficient MIP. In this manner, the MIP would include the accident investigation plan applicable to launches under 14 CFR part 415 and additional requirements addressing accidents, incidents or other unplanned events during the reentry portion of an RLV mission. Upon reconsideration, the FAA has determined to include stand-alone accident, incident and mishap investigation requirements covering all phases of an RLV mission and to remove reference to part 415 from its requirements. References to part 415 that appeared in proposed § 431.45 are removed from § 431.45 in the final rule and the data requirements for purposes of immediate notification and submission of a written preliminary report to the FAA are listed in § 431.45. Additional modifications have been made for the purpose of ensuring consistency in notification and reporting requirements for ELV and RLV mishaps.

NorthStar requested clarification of the term ''immediate'' for purposes of accident notification and requested that a time interval, such as one hour, be specified. Due to the severe nature of an accident, the FAA requires notification as soon as an event occurs, not within an hour or more. Therefore, the FAA will not include a time interval in the final rule. The FAA understands that immediate notification will not include all of the relevant details. More detailed information would be provided in the follow-up preliminary written report required within 5 days of the event. ERPS expressed concern over the requirement imposed upon the MIP that it provide for immediate notification that includes potential consequences for other vehicles or systems of similar type and proposed operations. ERPS states that this information would not be available until research and analysis is performed. The FAA agrees and notes that this requirement is now an element of the written report. ERPS further suggests that the written preliminary report identify the cause of the mishap. The FAA disagrees because accurate information concerning the cause of a mishap will not necessarily be available until an investigation is conducted. Identification of the cause of a mishap is an investigation report requirement under § 431.45 of the final rule.

Section 431.47 Denial of Safety Approval

Section 431.47 of the final rule provides that the FAA notifies an applicant in writing if safety approval is denied and provides the reasons for the denial. Safety considerations addressed through performance-based criteria included in the final rule may nevertheless result in denial of safety approval where the FAA determines that a proposed mission would jeopardize public health and safety and the safety of property even though an applicant has addressed the elements required for safety review in its application. The applicant can respond and correct any deficiencies identified by the FAA and request reconsideration. An applicant is notified directly by the FAA.

The Aircraft Owners and Pilots Association (AOPA) expressed concern that others affected by issuance of an RLV mission license, such as users of the National Airspace System, should have an opportunity to voice concerns over issuance of the approvals leading to a license. The FAA does not envision an open licensing process that would allow competing concerns to prevent issuance of a license. Rather, the FAA is designing a concept of operations for use of the national airspace system to ensure that all users can be accommodated safely and without unreasonable disruption.

Kelly and ERPS inquired as to the timing of a denial of safety approval. The FAA envisions that individualized aspects of the safety review process would require feedback, on an ongoing basis, from the FAA to an applicant as additional data needs are identified. Impediments to issuance of a safety approval would result from either deficient information, which would be identified to an applicant in the course of the FAA's review, or inability by an applicant to satisfy safety criteria outlined in subpart C of the final rule, part 431. The FAA would not withhold its conclusion if it determines that a proposed mission cannot be approved for safety reasons, but would provide such indications to an applicant who could modify its proposal to satisfy safety criteria. By statute, the FAA is committed to a 180-day review period for review of an accepted application and is also statutorily bound to notify an applicant not later than 120 days after receiving an accepted application of any pending issue. The combination of statutory deadlines, pre-application consultation to facilitate preparation of an acceptable application, and FAA commitment to an interactive and consultative licensing program should relieve any concern among applicants that the FAA would delay in making the determinations required for an RLV mission license.

Subpart D—Payload Reentry Review and Determination

Reentry of a payload may present policy and safety issues different from those presented when a payload is launched. Accordingly, a determination separate from a payload determination is required to reenter a payload, whether it is one that was reviewed for launch or an object retrieved from space for return to Earth.

ERPS did not object to the requirement for a payload reentry determination but questioned where responsibility lies for obtaining one. An owner or operator of the payload proposed for reentry may request the determination in place of an RLV operator; however, an RLV mission or licensee desiring to reenter a payload on its vehicle must ensure that a favorable determination has been made by the FAA. Accordingly, it is ultimately the responsibility of an RLV mission licensee to ensure that a payload reentry determination has been requested, if necessary, and that a favorable determination is made before proceeding with the mission.

Section 431.51 General

Section 431.51 states the requirement for a payload reentry review and determination. It may be requested as part of, or separate from, an RLV mission license application review but must be completed favorably for a payload to be reentered to Earth.

Section 431.53 Classes of Payloads

In the interest of facilitating RLV mission licensing, payloads sharing common characteristics may be reviewed as a general class and determined appropriate for reentry. Unique characteristics of payloads within the class, such as hazardous materials contained within the payload, may subject a particular payload to individual review. Because a payload reentry determination may be issued far in advance of an RLV mission, current information regarding each payload to be reentered must be reported to the FAA at least 60 days before a scheduled RLV mission involving the payload. The FAA can then ensure that a payload approved generally as part of a class does not pose unique hazards or policy considerations that must be separately addressed.

TGV considers that 60 days notification should be replaced with 24 hours, particularly for payloads similar to those previously launched and reentered, to facilitate rapid response time by an RLV operator. The FAA extends to RLV missions the existing 60-day notification period applicable to ELV-launched payloads for the time being but notes that only updated information not previously reported to the FAA and reviewed as part of the payload reentry review would require submission. An applicant for a payload reentry determination would be well-served to anticipate the types of payloads and their contents that it envisions reentering.

Section 431.55 Payload Reentry Review

Other Federal agencies are consulted in performance of a payload reentry review, as is done in the payload review process, to determine whether reentry of a proposed payload poses any issues that would adversely affect U.S. national security or foreign policy interests or would jeopardize public health and safety or the safety of property. As in a payload review, as well as other reviews required for an RLV mission license, the FAA informs the applicant in writing of impediments to issuance of a favorable determination, allowing the applicant an opportunity to respond or revise its application. Kelly, ERPS and NorthStar expressed the same concerns over timing issues already addressed as part of the policy and safety review process outlined above. The agency response is the same as previously stated with regard to such concerns.

ASTi inquired as to whether a payload that is launched and subsequently reenters without leaving an RLV requires a payload reentry review. The agency does require a favorable determination for a payload to be launched and subsequently reentered, whether or not it is first deployed from the vehicle and then reentered aboard the same or other RLV. Changes in payload characteristics must be evaluated to ensure reentry is appropriate. Moreover, a payload that is not hazardous or problematic in terms of U.S. policy for launch purposes may pose concerns to public safety or the U.S. Government upon reentry. Accordingly, a prudent RLV or payload operator may seek a payload reentry determination if there is a possibility that a payload, once launched on an RLV, cannot be deployed and would remain on-board the vehicle for reentry.

Section 431.57 Information Requirements for Payload Reentry Review

Specific information requirements for a payload reentry determination are listed in this section of the final rule. NorthStar suggests that a means of assuring confidentiality of proprietary information be provided. As specified in 14 CFR 413.9, any person furnishing information or data to the FAA may request, in writing, that its trade secret or proprietary commercial or financial data be treated in a confidential manner.

Section 431.59 Issuance of Payload Reentry Determination

Section 431.59 provides the bases upon which the FAA issues a favorable payload reentry determination. If an unfavorable determination is issued, the applicant is notified by the FAA in writing, and has an opportunity to respond to the reasons for denial and request reconsideration. In response to a request from ERPS for clarification, the FAA states that a person denied a favorable payload reentry determination may respond and request reconsideration immediately upon obtaining written notice from the FAA or may wish to do so at a future time.

Section 431.61 Incorporation of Payload Reentry Determination in License Application

As previously stated, a favorable payload reentry determination is required for an RLV mission that includes a reentering payload. If information on which a favorable determination is based changes before the conduct of an RLV mission, the FAA must be provided with updated data and may perform an additional review including coordination with other Federal agencies. The FAA would do so if changed information signals possible effects on the FAA's safety mandate or on U.S. Government interests safeguarded through the licensing process. These requirements are consistent with current practice with respect to payloads proposed for launch on ELVs. Section 431.61 of this final rule extends this practice to RLV missions.

ERPS commented that the responsibility for complying with § 431.61 requirements should be imposed upon the payload owner or operator and not the RLV mission licensee. The FAA disagrees with ERPS. The privilege granted to a licensee by an RLV mission license is conditioned upon the FAA having current information that is material to public health and safety and safeguarding U.S. national security and foreign policy interests. Because the FAA does not license payloads or their owners and operators, the RLV mission licensee is in the best position to ensure that its customer, the payload owner or operator, reports changes in information to the licensee and to the FAA. By doing so, the licensee can feel confident that it is in compliance with the license. This responsibility is properly assigned by the final rule to the RLV mission licensee.

Section 431.71 Public Safety Responsibility

Consistent with current practice for ELV launch licenses, § 431.71 of the final rule states the basic principle that a licensee is responsible for ensuring

safe conduct of licensed activities. A license is issued on the basis of representations contained in an application that have been reviewed and approved by the FAA. Accordingly, a licensee is responsible for ensuring that it operates in a manner that is consistent with its application. Any deviation from the application would be a basis for revocation of the license or other enforcement action by the FAA against a licensee.

Section 431.73 Continuing Accuracy of License Application; Application for Modification of License

Section 431.73 applies to a licensed RLV mission, the FAA's regulatory program for requiring approval of any changes in licensed activity from that reviewed by the FAA and authorized by a license. A licensee is therefore responsible for ensuring that representations contained in its application remain accurate for the life of the license. Any proposed change in operation that may affect public health and safety or the safety of property is subject to prior approval by the FAA. Section 431.73(b)(2) lists elements of an application that, if altered or affected by the change, would constitute a change in the accuracy of the license application. An application to amend or modify a license must comply with 14 CFR part 413 requirements applicable to preparation and submission of an application. The FAA does not re-open findings that are not affected by a proposed change and limits its review to those determinations affected.

Kelly commented that a time limit should be imposed upon FAA license modification reviews and that a fast track approach should be used for issue resolution. The FAA has not specified in regulations the amount of time within which it would approve an application to amend a license. A proposed modification may affect approvals already granted in a significant way, essentially requiring that they be performed anew, such as where an RLV safety-critical system or mission proposal would change significantly. In such cases, the FAA may treat the application for modification as a new license application and commence the 180-day review clock. Minor changes would require far less time. This variability prevents the FAA from imposing upon itself strict time limits, other than those dictated by statute, for reviewing a proposal for modification of a license. The FAA does agree with Kelly, however, that issues posed by a proposed modification should be identified as quickly as practicable to facilitate their resolution and to this end seeks support from the proponent of the modification. With this in mind, § 431.73(c) requires that the licensee seeking modification of its license identify those parts of its license or its application that would be changed or affected by a proposed modification.

USA and ERPS requested clarification of FAA policy on what constitutes a material change requiring reporting to the FAA and request for license modification. ERPS is concerned that too strict a requirement would have a chilling effect on willingness of license applicants to disclose fully technical information in an application. ERPS would like the FAA to designate those designs, operations and the like that must be ''frozen'' in order to remain in compliance with a license. Otherwise, according to ERPS, a development program would be hindered by the need to continuously submit license modification applications to the FAA.

In response to USA and ERPS, FAA believes that a change is material if it could affect fulfillment of the FAA's safety mandate, that is, if it could affect public health and safety or the safety of property. The final rule designates procedures, hardware, systems and plans that, if changed, could affect public safety. The final rule does so in the interest of providing notice to RLV mission licensees of particular aspects of an RLV mission application that must be maintained under current FAA approval for the license to remain valid. Minor modification to the list that appears in § 431.73(b)(2) is made in the final rule to track more closely the required components of a license application.

Section 431.75 Agreements

For reasons explained in the NPRM, an RLV mission licensee must enter into a variety of agreements, including an agreement for use of property and services of a Federal launch range, if applicable, or an agreement with a licensed site operator. If launch and reentry will occur at separate sites then agreements with each site operator would be required. The FAA expects that licensed operators of launch and reentry sites will impose safety requirements on their customers, including RLV mission licensees, that would cover activities other than launch and reentry at the site. Adherence to such safety requirements is also a requirement under the RLV mission licensing rules.

Where a licensed site is used to support launch or reentry for an RLV mission, § 431.75(b) of the final rule requires an agreement between an RLV mission licensee and the U.S. Coast Guard for issuance of Notice to Mariners before a launch or reentry unless the licensed site operator already has arrangements in place under the terms of an agreement with the U.S. Coast Guard. A similar agreement is also required between an RLV mission licensee and the regional FAA office for issuance of Notice to Airmen and for closing of air routes during launch and reentry windows, unless the licensed site operator maintains a comparable agreement. An RLV mission licensee also bears responsibility for such agreements when it uses a private site or has exclusive use of a site that is not a Federal launch range. Where launch or reentry takes place at a Federal launch range, the Federal range authority coordinates the Notices with the U.S. Coast Guard and FAA regional offices, respectively, so the requirement would not be imposed on the RLV mission licensee.

ACTA commented that closing of air routes anywhere under the flight path of an RLV may be too restrictive. ACTA states that Federal launch ranges close airways only if the hazard area includes any part of an airway or the vehicle or any of its jettisoned stages and debris would penetrate an airway at an altitude below 100,000 feet. Instead of a change in the final rule, the FAA prefers to resolve air route closing issues, including those presented by potential use of contingency abort locations, as part of the concept of operations it is developing for use of the National Airspace System and on an individual basis as part of the FAA's safety review of a proposed mission. The FAA also reserves discretion within the FAA regional office to impose measures deemed necessary by that office to protect public safety. The need to clear airspace over a contingency abort location may depend upon a number of factors, such as the likelihood of using that location, air traffic density around it, and the time required to coordinate and clear airspace should a contingency abort be implemented. The FAA makes no change to the final rule requirement regarding agreements for notices to mariners and airmen.

Section 431.77 Records

Section 431.77 extends record retention requirements imposed on ELV launch licensees to RLV mission licensees. The FAA does not accept the recommendation offered by TGV to change the record retention requirement from three years to one year. In the event of an accident or incident in the course of an RLV mission, a licensee is required to preserve relevant records until completion of any Federal

investigation and the licensee is advised by the FAA that the records need not be maintained any longer. ERPS questions why records must be maintained in perpetuity if they can be made available to the FAA. The FAA does not require perpetual record retention and does not intend to be the custodial record retention office for private industry. The FAA would share a licensee's interest in prompt, efficient resolution of an investigation and would require that records be maintained in the interest of developing accurate and comprehensive investigation findings. The FAA does not envision that this requirement would be unduly burdensome to industry.

Section 431.79 Reusable Launch Vehicle Mission Reporting Requirements

The FAA requested public comment on proposed reporting requirements contained in the NPRM in light of rapid turnaround missions contemplated for RLV operations. The NPRM proposed 60-day and 15-day reporting requirements in advance of an RLV mission, in addition to mishap reporting consistent with the MIP and ERP submitted as part of a license application under 14 CFR 431.45. Lockheed Martin, ERPS and TGV recommended a 24-hour advance reporting requirement for an RLV mission for notifying the FAA of the time and date of intended launch and reentry of an RLV. TGV also suggested 7 days advance reporting for a new type of payload and 24 hours for a payload type previously launched. Vela argued that 60 minutes advance reporting is no more realistic for an RLV than it would be for an aircraft and was echoed by ASTi in suggesting use of an aircraft model and filing of a flight plan in lieu of reporting. The X PRIZE Foundation and B–G suggested using notice periods comparable to those used for issuance of notices to airmen and notices to mariners. Kelly suggested a provision be added for quick turnaround missions, perhaps 3–7 days in lieu of 15.

Mission reporting requirements as proposed in the NPRM provide a minimum of 60 days notice to the FAA of a planned mission to facilitate FAA scheduling and final checks on license status. Collision avoidance analysis must be completed and inspector schedules arranged to accommodate mission scheduling. As time draws closer to an actual mission, the FAA seeks 15 days notice of mission plans assuming a licensee is then actively pursuing a launch campaign to meet its intended mission date. The 15-day notice is provided to U.S. Space Command to facilitate its collision avoidance analysis and tracking efforts. For ELV launches, in particular, comparable requirements have been extremely useful for the FAA and have not proven burdensome or problematic for licensees. For purposes of facilitating FAA planning and scheduling and to ensure the FAA can support a licensed RLV mission as part of its launch manifest, the FAA retains the 60-day minimum reporting requirement in the final rule. The FAA also retains the 15-day requirement. As RLV operation matures and if practical experience so indicates, the FAA will consider modification of these requirements in the future, particularly when necessary to facilitate rapid turnaround missions.

Comments also requested clarification of procedures and paperwork required to fulfill reporting requirements. Information that must be reported at least 60 days in advance of a mission is not restricted to a particular format. For 15-day notification of ELV launches, the FAA utilizes the FAA/U.S. Space Command Launch Notification Form located at 14 CFR part 415, Appendix A. A licensee may use this form to provide the required information.

Section 431.81 Financial Responsibility Requirements

A companion rulemaking details requirements for demonstration of compliance by an RLV mission licensee with financial responsibility requirements for reentry. For purposes of an RLV launch, requirements of 14 CFR part 440 apply. Financial responsibility requirements applicable to a particular mission are set forth in a license order that is part of an RLV mission license.

Section 431.83 Compliance Monitoring

Section 431.83 of the final rule states the statutory requirement that a licensee must allow Federal officials or their designee access to observe activities associated with the conduct of a licensed mission, including contractor and subcontractor activities.

Kelly commented that access should be qualified by noting that to the maximum extent possible it should be done on a non-interference basis. ERPS requested clarification of FAA compliance monitoring policy.

In fulfilling its safety mandate, the FAA may observe activities associated with the conduct of licensed activity, including activities conducted at a production facility or assembly site, as necessary to ensure compliance by a licensee with the terms and conditions of a license. Representations made by a licensee in its application are part of the license and the FAA may observe any activities associated with the conduct of licensed activity to ensure adherence to representations made in a license application. The FAA does not use, and has not used, its authority to interfere with applicant activities or to in any way obstruct them. However, the FAA is entitled by law to full access to facilities and need not give a licensee notice of its intent to monitor activities.

Section 431.85 Registration of Space Objects

Section 431.85 of the final rule retains proposed requirements for registration of space objects to facilitate fulfillment of responsibilities accepted by the United States as a signatory to the Convention on Registration of Objects Launched into Outer Space.

Subpart F—Environmental Review

Subpart F contains environmental review requirements applicable to licensing of RLV missions. The FAA must comply with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508 and its own procedures.

Section 431.91 General

Section 431.91 of the final rule sets forth the basic requirement that an applicant for an RLV mission license must provide to the FAA sufficient information to enable the FAA to analyze the environmental impacts of proposed RLV mission activities, including those to be performed at a reentry site. Comparable requirements for launch site impacts are already required under 14 CFR 415.101, and are not repeated here.

Section 431.93 Environmental Information

Section 431.93 lists the categories of information the FAA requires from an applicant in order to analyze and assess environmental impacts resulting from use of a launch site, reentry site or contingency abort location or RLV in the conduct of an RLV mission, if use of that site or vehicle as proposed is not already covered by existing environmental documentation. The same would apply to reentry of a payload that may have significant environmental impacts in the event of a reentry accident. Other information needed by the FAA for the agency to comply with its environmental review requirements under NEPA is also required from the applicant. Specific reference to the launch site proposed for

the conduct of an RLV mission is added to the final rule to address proposed use by an RLV operator of a private site not already assessed by existing Federal environmental documentation.

Kelly registered its concern that attempts to comply with environmental laws have been known to quash commercial projects and expressed unease at the number of potentially applicable laws and the research needed to identify and comply with them. Kelly suggested that the FAA be aggressive, with support from Congress, in assuring that environmental laws do not prevent the RLV industry from developing. In a similar vein, ERPS was concerned that every new type of RLV could be subject to environmental review requirements and associated burdens. ASTi suggested that a licensed site operator should bear responsibility for covering vehicles in its environmental documentation.

The FAA understands the commitment required by government and industry to facilitate environmental reviews required by law. Pre-application consultation is a useful device for scoping environmental review issues presented by an RLV mission proposal, in addition to technical safety and policy matters. Issues presented by a specific proposal would depend upon the proposed action, the proposed sites and contingency abort locations if any will be used as part of an application, and the vehicle proposed for flight. To the extent those issues are covered by existing documentation, such as that prepared in support of a site operator license, the FAA ''tiers off'' of such documentation to ensure reviews are conducted only to the extent necessary to deal with the unique attributes of a proposed mission. For example, the FAA facilitates environmental reviews for launch vehicles by covering in programmatic documentation a range of vehicle characteristics. Accordingly, for many vehicles, only site specific environmental effects may require analysis.

The FAA works closely with an applicant to identify particular environmental data and documentation needs and ensure compliance with applicable environmental laws. The agency encourages early involvement by an applicant in preparation of environmental documentation to facilitate the environmental review process and satisfy an applicant's scheduling needs.

Part 433—License To Operate a Reentry Site

Section 433.1 General

A new part 433 is added to 14 CFR Chapter III governing licensing of the operation of a reentry site. The FAA will evaluate safety issues on a case by case basis to allow prospective operators maximum flexibility in determining the array of services that may be offered at a site and this principle is reflected in § 433.1 of the final rule.

A license would be required for an entity to operate a reentry site and offer it for use by reentry vehicle operators. A separate license to operate a reentry site is not required for an RLV or reentry vehicle operator to develop and use a private facility for its exclusive use. Safety and environmental issues associated with private use of a site by a launch or reentry licensee, as well as an RLV mission licensee, would be addressed as part of the license to operate the vehicle.

Section 433.3 Issuance of a License To Operate a Reentry Site

Section 433.3 of the final rule establishes that, consistent with its statutory mandate, the FAA will license an operator to operate a reentry site in accordance with representations presented in an application for review and approval by the FAA, and subject to terms and conditions stated in the license.

Kelly and ASTi inquired as to whether safety operations conducted at a reentry site would be the sole consideration for licensing operation of a site. The FAA's mandate in licensing the operation of a reentry site also includes consideration of national security and foreign policy interests of the United States. Government policy considerations would also be a factor in determining whether a license to operate a reentry site may be issued. However, issuance of a license to operate a reentry site would not authorize an RLV or reentry vehicle operator to use that site. An operator wishing to use the site for reentry would have to demonstrate through the licensing procedure applicable to it that the site is suitable for the use proposed by that operator in accordance with FAA regulations.

NorthStar noted in its comments that a site may qualify as a reentry site under certain conditions that may not exist on a year-round basis due to atmospheric or other conditions. The FAA agrees and, consistent with its approach to licensing commercial space transportation activities, the authorization granted by a license to operate would be limited to representations and information contained in the application and evaluated by the FAA.

Section 433.5 Operational Restrictions on a Reentry Site

In addition to other limitations on operation imposed by the FAA in accordance with § 433.3, a reentry site may only be offered for use by those reentry vehicles, including RLVs, for which the three-sigma footprint of the vehicle is wholly contained within the site. Whereas § 431.43(b) imposes a restriction on an RLV operator in identifying suitable landing sites, a licensed reentry site operator would be similarly restricted in terms of the vehicles that may land at its reentry site. The criteria applicable to identifying and defining the three-sigma dispersion of a reentry vehicle presented above in the discussion of § 431.43(b) and the agency's three-pronged public safety strategy for RLV missions also applies to § 433.5.

Orbital Sciences observed that an RLV stage that is not itself a reentry vehicle is not covered by the definition of a reentry site and therefore its landing would not be regulated by the FAA. Landing of stages is covered by § 431.43(b), which applies to vehicle staging impact areas as well as nominal landing and contingency abort locations for an RLV.

Section 433.7 Environmental

Because licensing the operation of a reentry site is a major Federal action requiring compliance by the FAA with NEPA and associated regulations, § 433.7 of the final rule requires that a license applicant supply sufficient information to the FAA to enable the agency to do so.

Section 433.9 Environmental Information

The FAA understands that a proposed reentry site may be covered by existing documentation that addresses environmental impacts when that site is used for certain purposes. Reentry impacts may require additional environmental consideration and § 433.9 establishes the requirement that information necessary for doing so must be provided by an applicant for a license to operate the site as a reentry site. A licensee authorized to operate a launch site may, for example, be required to submit additional data for agency review under environmental laws before the site may also be authorized for use as a reentry site.

Part 435—Reentry of a Reentry Vehicle Other Than a Reusable Launch Vehicle (RLV)

A new part 435 is added to 14 CFR Chapter III under the final rule to address licensing requirements for reentry of a reentry vehicle that is not an RLV. Since the COMET/METEOR program was discontinued, all of the reentry concepts presented to the FAA for informational purposes or in pre-application consultation have involved RLVs. The final rule therefore provides detailed requirements for obtaining an RLV mission license under part 431. Rather than repeat in part 435 all of the requirements of part 431 that are applicable to the reentry phase of an RLV mission, part 435 expressly states requirements and licensing considerations that are unique to reentry of a reentry vehicle that is not an RLV. An applicant for a license under part 435 is referred to part 431 for additional requirements applicable to a proposed reentry.

The FAA uses the same three-pronged strategy to address public safety considerations employed in evaluating an RLV mission. Comments were solicited on the proposed approach of assessing reentry risk in combination with the launch of the launch vehicle that placed the reentry vehicle in Earth orbit or outer space. ERPS commented on this combined approach to risk noting that an RLV mission to launch a reentry vehicle as a payload for subsequent reentry involves three events that, in combination, must satisfy the expected casualty risk criteria for an RLV mission, that is, launch and reentry of an RLV and subsequent reentry of the reentry vehicle. ERPS also stated that if the RLV and reentry vehicle have different operators, they would be required to negotiate their respective risks and the RLV mission licensee would have to certify to the FAA that mission risk is within acceptable limits even though it is not the reentry vehicle operator. ERPS therefore recommends retention of the combined risk approach unless the reentry vehicle is intended to reenter after an RLV mission license has expired.

The FAA does not agree with the recommended approach offered by ERPS. Currently, in licensing ELV launches, the FAA considers, in some measure, reentry of upper stages after an ELV launch is completed for purposes of assessing launch risk because that is part of the launch mission. In response to a question from Kelly regarding upper stage reentry risk, the FAA would assess the risk of reentry of an expendable upper stage of an RLV as part of mission risk for an RLV mission. Reentry of a reentry vehicle placed in orbit as part of an RLV launch mission ought to be assessed as part of RLV mission risk, in the FAA's view, just as an RLV utilizing multiple stages would be subject to combined risk assessment for the mission, because its reentry may be considered part of the launch mission. The FAA notes, however, that its combined risk approach would apply only to launch vehicle stages and to payloads that are themselves reentry vehicles. It would not apply to natural de-orbiting of a satellite placed in space by an ELV or RLV for which purposeful return to Earth, substantially intact, is not intended, because the return to Earth is not part of the launch mission.

Subpart A establishes the kinds of reentry licenses that may be granted by the FAA and the approvals necessary to obtain a reentry license and describes in general terms the authorization granted by a reentry license.

Subpart B identifies the policy review and approval required for a reentry license and incorporates policy review and approval requirements applicable to reentry of an RLV under part 431, subpart B of 14 CFR Chapter III, subchapter C.

Subpart C identifies the safety review and approval required for a reentry license and incorporates safety review and approval requirements applicable to reentry of an RLV under part 431, subpart C of 14 CFR Chapter III, subchapter C. The combined risk criteria for a proposed reentry mission is identified in § 435.35 of the final rule to be consistent with that applicable to an RLV mission.

Subpart D identifies the payload reentry review and determination required for a reentry license and incorporates requirements applicable to a payload reentry determination under part 431, subpart D of 14 CFR Chapter III, subchapter C.

Subpart E identifies post-licensing requirements and license terms and conditions applicable to a reentry license and incorporates requirements applicable to reentry of an RLV under part 431, subpart E of 14 CFR Chapter III, subchapter C.

Subpart F identifies environmental review requirements applicable to reentry of an RLV under part 431, subpart F of 14 CFR Chapter III, subchapter C.

Except for the comments cited in the above paragraphs of this part, comments directed at provisions of proposed part 435 repeated and reiterated industry concerns registered with respect to corresponding requirements of part 431. Likewise, the FAA echoes its response to those comments and does not separately discuss them here. Other than nonsubstantive corrections, the FAA makes no change to part 435 in the final rule from that proposed in the NPRM.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0643. This final rule will amend the commercial space transportation licensing regulations by establishing operational requirements for launches of reusable launch vehicles (RLVs) and the authorized conduct of commercial space reentry activities. The final rule will respond to advancements in the development of commercial reentry capability and enactment of legislation extending the FAA's licensing authority to reentry activities. The agency is proposing requirements that limit risk to the public from RLV and reentry operations.

The required information will be used to determine whether applicants satisfy requirements for obtaining a launch license to protect the public from risks associated with RLV missions and other reentries. The information collected includes data required for performing a safety review, which includes a technical assessment to determine if the applicant can safely reenter a reentry vehicle, including an RLV and payload, if any, to a designated reentry site without jeopardizing public health and safety and safety of property. The frequency of required submissions may depend upon the frequency of licensed launch activities; however, a license may authorize more than one launch. The agency received two comments on potential paperwork burden. One commenter agreed with FAA's estimated cost of $20,000 per license application and the other commenter stated that as currently done a large amount of paperwork exists to complete the licensing process. Once the regulatory process is complete the company does not believe their there will be enhanced operational efficiency and decreased paperwork costs. Neither entity presented any compelling information that disputes FAA's position regarding paperwork reduction. The estimated number of respondents on an annual basis is five. The estimated average annual burden is 4,384 hours.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information

unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that the final rule: (1) Has benefits that do justify its costs, is not ''a significant regulatory action'' as defined in the Executive Order, and is ''significant'' as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are available in the docket, and are summarized below.

Baseline for Economic Analysis

The final rule implements certain policies developed by AST in 1992 with respect to public safety for the first commercial space reentry operation. However, the safety criteria in this final rule use different measures that better reflect current agency and range safety practices. The 1992 policy established safety criteria pertaining to a unique and specific request to conduct a first-of-a-kind payload reentry mission; that is, the COMET, later renamed METEOR, reentry vehicle. Accordingly, a comprehensive regulatory (benefit-cost) analysis was not required. Therefore, the baseline case used for this analysis views the final rule as a new requirement imposed on an emerging segment of the commercial space transportation industry that plans to operate reusable launch vehicles (RLVs) or conduct reentry operations with reentry vehicles (RVs). Doing so implies that, but for imposition of safety requirements by the agency, some compliance costs will not have been incurred by entities planning to conduct RLV missions (launch and reentry) and RV operations that are associated with launches from Federal ranges and non-Federal launch sites. (Regulatory costs and benefits associated with launches from Federal ranges are assessed as part of a separate rulemaking on launch licensing requirements for launches from Federal ranges.)

Costs

The final rule is expected to impose a total estimated cost of $151 million ($86 million, discounted), in 1999 dollars, on the commercial space transportation industry and the FAA over the 15-year period from 2001 to 2015. Commercial space transportation industry entities potentially impacted by the final rule will incur approximately 20 percent (or $31 million) of this total cost estimate in the form of compliance costs. The FAA will incur about 70 percent (or $120 million) of the total cost estimate in the form of administrative costs. All monetary values shown in this regulatory evaluation summary are expressed in 1999 dollars over the 15-year period. Due to some of the operational requirements of the final rule, costs may materialize that have not been specifically considered in this evaluation. For example, the requirement for each commercial space operator to have an independent safety inspector could, under certain circumstances, result in costs not examined in this evaluation. The independent safety inspector could require the operator to abort a launch or reentry for safety reasons, which could result in higher operating costs.

Reentry of RLVs and RVs are subject to comparable safety requirements and therefore regulatory costs for reentry are assessed collectively. Costs are assessed on the basis that, over the next 15-year period, five commercial operators of RLVs or RVs will be impacted by the regulations. It is assumed that five operators will obtain all necessary approvals to conduct RLV missions or RV reentries and that market demand is sufficient to support that level of vehicle operation.

Industry Compliance Costs

Section 431.25: Application Requirements for Policy Review and § 435.23 Policy Review Requirements and Procedures

These sections of the final rule will impose an administrative paperwork burden on each of the five anticipated commercial space industry operators potentially impacted by requiring them to provide specific policy review information to the FAA with regard to their anticipated RLV missions (launch and reentry) or RV reentry operations. The cost estimate of $400 per operator assumes an employee with an annual loaded salary of approximately $2000 (with fringe benefits) and a level of effort of eight hours.

Section 431.33: Safety Organization and § 435.33: Safety Review Requirements and Procedures

Under the baseline, a safety organization with clearly defined roles, responsibilities, authorities, and lines of communication is consistent with the findings and recommendations of the Rodgers Commission and National Transportation Safety Board. However, the requirement to '' * * * designate a qualified safety official * * * to monitor independently compliance * * * with * * * [all] safety policies and procedures'' is not necessarily customary and usual practice. Inclusion of this requirement suggests that it is a refinement of industry baseline practices designed to mitigate safety risks to the public. For example, to be ''responsible for the conduct of all * * * mission activities * * * '' implies a degree of comprehensiveness that may not be common practice in industry. Because the safety official must be independent, the function cannot be assigned as a collateral duty to an individual with line responsibility for launch and reentry operations, though it could conceivably be assigned to an existing employee. Furthermore, the magnitude of responsibilities of the safety official suggests that the level of effort required to perform this function will exceed part-time employment. Assuming that the independent safety official function will not be performed as a collateral duty, this requirement will result in a commercial space transportation entity hiring a person to

fulfill the safety official role. Industry as a whole will incur $6.4 million for all five operators over the 15-year period.

Section 431.35: Acceptable Reusable Launch Vehicle Mission Risk and § 435.35 Acceptable Reentry Risk for Reentry of a Reentry Vehicle

Commercial space transportation entities are expected to incur additional costs for performance of risk analyses of vehicle operations, including reentry, and will incur costs in assessing the probabilities and consequences of all reentry hazards, events, and system failures that potentially expose the public to risk. Additionally, commercial entities will expend effort preparing documentation and establishing an associated document control system for drawings and schematics. This compliance activity is expected to fulfill the level of rigor implied by the requirements contained in the final rule. The total cost of compliance for all potentially impacted operators will be approximately $4 million over the 15-year period.

Section 431.37: Mission Readiness and § 435.33: Safety Review Requirements and Procedures

The requirement to provide specific procedures to the FAA that verifies mission readiness presents an administrative paperwork burden to a commercial entity. This requirement will cause an operator to incur costs for preparing and submitting the requisite information to the FAA. For all entities, this requirement will impose an estimated cost of compliance of approximately $20,300 over the 15-year period.

Section 431.39: Mission Rules, Procedures, Contingency Plans, and Checklists and § 435.33: Safety Review Requirements and Procedures

Commercial space transportation entities are generally expected to fulfill the requirements as part of their standard operating procedures. However, the FAA anticipates that these entities will incur some additional costs conforming to FAA requirements. Additionally, commercial entities are expected to incur costs from submitting updated documents with the FAA periodically, and preparing for, accommodating and reacting to FAA inspection and compliance monitoring activities. Industry will incur $418,000 over the 15-year period.

Section 431.41: Communications Plan and § 435.33: Safety Review Requirements and Procedures

Commercial space transportation entities are expected to have in place communications plans that, for the most part, are consistent with the final regulatory requirements as a matter of standard business practice. However, they are expected to incur incremental costs complying with the requirement, annual recurring costs from interfacing and exchanging documents with the FAA periodically and preparing for, accommodating and reacting to FAA inspection and compliance monitoring activities. Industry will incur $418,000 over the 15-year period.

Section 431.43: Reusable Launch Vehicle Mission Operational Requirements and Restrictions and § 435.33: Safety Review Requirements and Procedures

Commercial space transportation entities are expected to expend additional levels of effort to comply with risk mitigation requirements that, to some extent, limit vehicle flight path options during nominal and non-nominal operations. This requirement also imposes limitations on dwell time over populated areas and requirements for performing a collision avoidance analysis during launch windows to maintain adequate separation from orbiting objects.

This final rule will impose work restrictions and personnel rest requirements on commercial space transportation entities potentially impacted by this action. For example, an individual having direct control over reentry or involved in decisions affecting reentry operations is restricted to working 60 hours over the seven-day period preceding reentry. Further, the final rule will reduce the maximum permissible hours worked per shift to 12, limits the maximum number of consecutive workdays to 14, and specifies the minimum rest required (48 hours) between five consecutive days of 12-hour work shifts.

Currently, based on information received from industry, it is common practice among commercial space transportation entities to follow Air Force work and rest standards for launches. Those standards are similar to the requirements of this rule. Ordinarily, based on industry information, launch mission operations personnel work less than the maximum currently permissible, such as a 40-hour work week comprised of five eight-hour shifts. Hence, the 72-hour workweek is generally an extreme condition that occurs infrequently.

The duration of a reentry operation is likely to determine the extent of the impact that the work and rest requirements will have on commercial space transportation entities. However, this impact will occur under extreme or limiting conditions only (*e.g.*, one reentry operations person).

Given the relatively small size of the entities comprising the emerging RLV segment of the commercial space transportation industry, staff augmentation of at least one person is not unlikely as a result of the requirements. Additionally, the FAA anticipates that additional costs will be incurred for recordkeeping to ensure compliance with required work and rest standards, and preparing for, accommodating and reacting to FAA inspection and monitoring activities.

The total cost to industry for the 15-year period will be about $15 million.

Section 431.45: Accident Investigation and Emergency Response Plan and § 435.33: Safety Review Requirements and Procedures

As a matter of standard business practice, commercial entities are expected to have in place emergency response plans consistent with much of the regulatory requirement. However, the FAA anticipates that these plans will require additional annual maintenance to comply with certain elements of the final rule. For example, entities are likely to incur additional costs to establish their ability to successfully respond to accidents occurring in remote areas having sparse populations. Furthermore, additional annual maintenance costs are expected to arise from preparing for, accommodating and reacting to FAA inspection and monitoring activities. Industry will incur total compliance costs of approximately $2 million for the 15-year period.

Section 431.57: Information Requirements for Payload Reentry Review and § 435.43: Payload Reentry Review Requirements and Procedures

The final requirement to provide specific payload information to the FAA presents an administrative paperwork burden to a commercial entity. The submission of data to the FAA is estimated to impose costs of approximately $400 per application or $2,000 for five entities over the 15-year period.

Section 431.73: Continuing Accuracy of License Applications Application for Modification of License and § 435.51: General—Post Licensing Requirements—Reentry License Terms and Conditions

The final requirement will impose minor costs on a licensee to advise the FAA of material changes to its application, and RLV and reentry missions that may impact public safety and property. Depending upon the types of changes reported, it is assumed based on input received from FAA and industry technical personnel that, on average, a commercial space transportation entity will incur incremental compliance costs of approximately $34,000 per modification application. Industry as a whole will incur total compliance costs of approximately $170,000 for the 15-year period.

Section 431.75: Agreements and § 435.51: Post Licensing Requirements—Reentry License Terms and Conditions—General

Entities that conduct commercial launches of ELVs from Federal ranges must enter into formal agreements with the Federal range authority prior to using such facilities. Entities planning to use these same facilities for reentry missions will also be required to enter into such agreements. The final requirement has no impact on commercial entities other than the negligible level of effort expended (*e.g.*, less than one hour) to advise the FAA of compliance, and the incremental cost to industry to comply with this requirement will be negligible.

Section 431.77: Records and § 435.51: Post Licensing Requirements—Reentry License Terms and Conditions—General

It is generally accepted practice among all commercial concerns to maintain business operations records for some period of time, often more than three years. Furthermore, the availability and capability of electronic storage systems renders records retention a manageable task. Accordingly, the three-year requirement to maintain records for FAA review, upon request, will not impact commercial space transportation entities. From a worst case perspective, this evaluation assumes the FAA will exercise its record request authority. Total costs to industry will be approximately $24,000 for the 15-year period.

Section 431.79: RLV Mission Reporting Requirements and § 435.51: Post Licensing Requirements—Reentry License Terms and Conditions (General)

The information to be supplied by a licensee under this requirement is similar to that supplied previously to the FAA during the application process in accordance with § 431.57. The burden placed on the licensee is to provide more specific mission data than that supplied previously but closer in time to the actual conduct of the mission. Because an operator must have this data to perform a scheduled mission, the incremental cost to industry to comply with this final requirement will be zero.

Section 431.93: Environmental Information and § 435.61: Environmental Review—General

Because licensing is a major Federal action, a commercial space transportation entity will be required to provide information addressing the environmental effects of its operations so that the agency can fulfill its responsibility under NEPA and CEQ environmental regulations, even in the absence of the final rule. Commercial entities planning to conduct launch and reentry missions must submit environmental assessment data to the FAA regarding environmental impacts of its activities to enable the FAA to evaluate environmental effects not previously assessed by the agency. This will cause a commercial entity to incur incremental compliance costs of $278,000. Industry will incur compliance costs of $1.4 million over the 15-year period.

Section 433.7: Environmental Information

An analysis of the environmental impacts of operating a reentry site is required under NEPA. The requirement, as distinct from similar requirements for operation of a launch site, will cause a commercial entity to incur incremental compliance costs of $167,000. Industry will incur total compliance costs of approximately $834,000 over the 15-year period.

FAA RLV/RV Administrative, License Processing and Monitoring Costs

The final rule will result in the FAA expending great effort in evaluating RLV mission and reentry license applications and monitoring licensees for compliance. This evaluation estimates that the FAA will incur costs of approximately $120 million over the 15-year period, as the result of administering its review of license applications and monitoring licensee compliance in accordance with the requirements of certain sections of parts 431, 433, and 435.

The FAA's actual experience in evaluating an application to conduct a reentry mission is limited to the COMET/METEOR program. Much of the final rule reflects safety policies for reentry developed by the agency in 1992 to ensure that the COMET/METEOR payload reentry mission will not jeopardize public health and safety and or the safety of property. Consequently, this experience provides a partial basis for establishing the costs to the FAA for administering the final rule. Using this past experience, AST expects that the costs to be incurred in performing its RLV mission and reentry licensing pre-application consultation, application evaluation, and compliance monitoring duties in the near term to be higher than that incurred for COMET/METEOR for a single application, with or without a formal reentry licensing regulation. The extent to which such costs will be higher than that incurred for COMET/METEOR is unknown since there is no history of U.S. commercial reentry activity. The assessment of higher application costs, however, is largely due to the expectation that inherently more complex RLV programs will dominate reentry missions in the future and initially these will require greater evaluative effort on the part of FAA personnel until they have developed experience in this area. While AST budget estimates for fiscal year 2000 reflect additional funding needed to exercise its reentry mission approval function, this need cannot be attributed to the final rule, but rather to the complexity associated with the advancing technology that will be evaluated.

AST budget estimates of the cost to perform its pre-application consultation and application evaluation licensing responsibilities may be correlated collectively to §§ 431.23, 431.27, 431.31, 431.47, 431.55, 431.59, and 431.91; 433.3, 433.9; and 435.23, 435.31, 435.43, and 435.61 of the final regulation. The costs to be incurred by the FAA to implement its compliance monitoring responsibilities corresponding to §§ 431.73, 431.83, and 435.51 can vary widely, as the spectrum of changes to reentry program operations can range from minor to major. Therefore, the FAA expects to spend $3.6 million—an amount equivalent to that expended for COMET/METEOR—to implement and administer these final requirements for a single application.

Based on projections of the level of application activity over the 15-year period from 2001 to 2015, the FAA is

expected to spend approximately $120 million in administering the safety requirements of parts 431, 433, and 435. Approximately 94 percent (or $112 million) of the cost by the FAA to administer these parts will be incurred to approve the projected reentry license applications and modifications to be evaluated over the 15-year period. Approximately 6 percent (or $7.7 million) of the cost to administer parts 431, 433, and 435 will be expended on the review of application denials and reconsideration process.

Unlike the estimates for potential benefits, the costs section of this evaluation uses a point (or single) estimate rather than a range. The point estimate approach was chosen in estimating FAA administrative costs because, due in large measure to the agency's experience with the COMET/METEOR Program, there is far less uncertainty associated with the estimation of costs for this final rule relative to benefits.

Benefits

The final rule is expected to generate both quantitative and qualitative benefits. This rule is expected to generate quantitative benefits of $119 million (or $66 million, discounted), which represents enhanced safety over the 15-year period. Benefits include enhanced safety by limiting reentry risk to a level that does not exceed an expected average number of 30 casualties per one million RLV missions or reentries for the general public. The rule is also expected to generate qualitative benefits in the form of enhanced operational efficiency on the part of both the U.S. commercial space industry and the FAA. A formalized licensing process for reentry operations will enhance communications between the FAA and the commercial space transportation industry in terms of frequency and efficiency of information exchange. In so doing, it will instill a regulatory climate that will promote and foster growth and technological advancement in this maturing industry.

Quantitative Benefits

The potential safety benefits that are expected to accrue as the result of this final rule stem principally from a safety criterion implemented and administered by the FAA on commercial space transportation industry operators who wish to engage in RLV missions or reentries. The criterion is as follows:

$E_c \leq 30 \times 10^{-6}$: This criterion applies on a per mission basis and includes both launch and reentry phases of an RLV mission. It requires that the risk to the public associated with each mission incorporate a level of safety that is equivalent to a probabilistic outcome of no more than an expected average number of 30 public casualties per one million missions.

Compliance by operators with this safety criterion, along with other restrictions addressed in the final rule, are intended to limit risk to public safety. In estimating these potential safety benefits, the FAA employed the following steps.

First, the agency examined six accident types, grouped into two categories, related to airborne explosions and ground point-of-impact crashes. (For the purpose of this evaluation, the term accident is defined as any unplanned event with potential public casualty losses.) For each accident category—airborne or ground—the population density of the area surrounding the accident scene or accident zone can be either (1) none, (2) sparse (*e.g.* rural), or (3) dense (*e.g.,* urban). An examination of the consequences of these types of accidents was conducted. To arrive at accident consequences, the accident scenes or zones for airborne and ground accidents are characterized in terms of fatalities, injuries, and property damage under the baseline and the final rule. The difference between the baseline scenario and final rule scenario represents the incremental safety benefits that will be generated by the final rule. This process was performed for each of the steps below.

Second, monetary values are assigned to each of the various types of accidents expected to occur during launch or reentry (including accidents at or near launch sites).

Third, probabilities are assigned to each of the six accident types based on the percentage of impacted landmass (*e.g.,* no population, sparse population, and dense population) for the baseline and the final rule. That is, the probability of occurrence for each accident type over the next 15 years was determined by using the two types of risk criteria mentioned earlier.

Fourth, expected values were estimated for each of the accident types under the baseline and the final rule. For this final rule, the expected benefit values represent the difference between these two scenarios. One of the more difficult areas to ascertain is the probability of a reusable launch vehicle (RLV) accident in the absence of government regulation in order to calculate the expected value of an accident under the baseline and estimate the incremental safety benefits of the final rule. This difficulty stems from the fact there is no empirical evidence or historical RLV accident history. Because of this difficulty, there is uncertainty associated with estimating the probability of a RLV or RV accident. As a result of this uncertainty, the FAA estimated a range of accident probabilities, which are based on historical experience with ELV accidents and incidents, and sorted them into six categories or types of accidents. In estimating the expected casualty and property loss values, the probability of each of six accident types is multiplied by the accident consequence values (*e.g.*, the cost of an accident). This process was repeated for all six accident types and summed. This procedure was done for both scenarios (baseline and final rule). Thus, the difference in casualty and property losses for these two scenarios was used as the estimated benefits for this final rule. The results of these calculations generate the potential safety benefits as discussed below.

Safety benefits—accident costs avoided—are realized as RLV launch and reentry operations are performed, without incident. Therefore, the number of completed RLV missions and reentries projected over the 15-year period is multiplied by incremental safety benefits per mission to estimate total incremental safety benefits over the period 2001 to 2015. The total safety benefit resulting from the final rule is estimated to be $119 million for the period 2001 to 2015. This estimate of $119 million represents the midpoint of benefits ranging from $21 million to $217 million over the 15-year period. This midpoint estimate of benefits was chosen because of the high degree of uncertainty associated with the wide range of accident probabilities. Uncertainty stems from the extent to which industry has already adopted and implemented safety measures similar to those requirements as part of this rulemaking action. (Based on information obtained from commercial space industry technical personnel, nearly all of the potentially impacted operators will be in compliance with the final rule to some degree.) The low end of the range of benefits assumes that practically all of the potentially impacted operators will be in almost complete compliance in the absence of the final rule. The high end of the range of benefits assumes the opposite. There is insufficient information that will support adopting the benefits estimates at either end of the range. Thus, the median(or midpoint) was chosen as an appropriate benefits estimate. It suggests that the actual benefits to be generated by the final rule lie somewhere between the lower and upper end of this range.

Since uncertainty is associated with using a midpoint benefits estimate and range of benefits, the FAA solicits public comment as to whether its assumptions are appropriate and the validity of this approach. The agency asks that comments be specific and supported by quantitative data wherever possible.

Qualitative Benefits

The final rule is also expected to generate qualitative benefits in the form of enhanced operational efficiency to both the FAA and the commercial space industry. These types of benefits are not readily quantifiable. Examples of these qualitative benefits are shown below.

Formalizing licensing responsibilities for RLV and reentry operations (by establishing a specific regulation) will emphasize FAA duties and expectations.

It will also better define the licensing process relative to the *ad hoc* approach implemented for COMET and METEOR. This will afford applicants with clearly defined direction, possibly helping to facilitate the iterative pre-application consultation process. As the number of requests for RLV and reentry licensing increases, formality will also help ensure consistency in implementing the licensing process. This could lead to cost-savings to the FAA as a result of economies of scale from repetitive operations. These cost savings will spill over to commercial space transportation entities by reducing the turnaround time between application submittal and licensing approval.

Consistent application of the licensing process will help commercial space transportation entities gain familiarity with its requirements, leading to proficiency in their ability to interact with the process and the FAA. This in turn will lead to industry cost-savings, possibly due to less rework or paperwork avoided.

A formalized licensing process for reentry operations will enhance communications between the FAA and the commercial space transportation industry in terms of frequency and efficiency of information exchange. In so doing, it will instill a regulatory climate that will promote and foster growth and technological advancement in this maturing industry, while protecting public health and safety, and the safety of property.

Summary of Total Costs and Benefits

The total quantitative potential benefits and costs of this final rule are shown below in Table 1. This Table shows that the potential cost imposed by the final rule will be approximately $151 million over the 15-year period. Also shown in Table 1, about $31 million of this total cost will be incurred by industry. Table 1 also shows that the final rule will generate potential quantitative safety benefits of $119 million over the 15-year period. As noted previously in the benefits section of this evaluation, this rule is also expected to generate qualitative benefits in the form of enhanced operational efficiency to both the FAA and the U.S. commercial space industry.

TABLE 1.—SUMMARY OF QUANTITATIVE TOTAL COSTS AND BENEFITS

Category (in 1999 dollars, 15 yrs.)	Undiscounted (in millions)	Discounted (in millions)
Commercial Space Transportation Industry Compliance Costs	$30.8	$20.4
Federal Aviation Administration Implementation Costs	120.1	65.9
Total Costs	151.0	86.3
Accident Costs Avoided: Lower Bound (Safety Benefits)	21.1	11.8
Accident Costs Avoided: Upper Bound (Safety Benefits)	216.6	120.9
Total Accident Costs Avoided: Midpoint (Safety Benefits)	118.9	66.3

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act (which was amended March 1996) requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration has defined small business entities relating to space vehicles (Standard Industrial Codes 3761, 3764, and 3769) as entities comprising fewer than 1,000 employees.

The FAA projects that the commercial space industry will be composed of five small businesses over the 2001 to 2015 period. Furthermore, the FAA expects that the final rule will impact all five of these entities by imposing an average compliance costs of approximately $6 million over the 15-year period (in 1999 dollars).

The annualized compliance cost to each small business is approximately $700,000 (in 1999 dollars). Ordinarily, this section of the evaluation will be based on typical financial data (for example, annual net income or losses) as a means to determine whether any of the commercial space transportation small entities would be significantly impacted by the final rule. However, the traditional use of such financial data for these small entities cannot be employed since RLV operators (including a number of RV operators) represent relatively new companies and they have no revenue history. In fact, these small operators are in the process of raising funds to finance their new ventures. Due to the lack of data on the financial characteristics of these small RLV operators, this evaluation uses the 1998 average revenue received per launch for ELV operators. The revenue that RLV operators will obtain from their customers is expected to be similar to the revenue that established ELV

operators currently receive from their customers. Revenue data based on ELV operators' experience will be used for the purpose of assessing the extent to which compliance with the final rule will impose significant economic impacts on each of the five potentially impacted small RLV operators. This assessment will be done by comparing the annualized cost of compliance to the annual average revenue, which is expected to be received by each of the five small RLV operators over the next 15 years. While the long-term revenues of RLV operators are expected to exceed those of ELV operators, which will be due to inherent lower operating costs, for the purpose of this evaluation they are assumed to be nearly the same over the 15-year period, thereby representing a worst-case scenario. Hence, the average revenue of about $50 million generated by each ELV launch in 1999 will be used as a indicator of what RLV operators will be expected to generate per RLV mission in future years. This assessment is based primarily on information received for orbital launch events for ELV operators from the FAA's Office of Commercial Space Transportation Report entitled, ''Commercial Space Transportation: 1999 Year In Review'', Table 1 and the Appendix (January 2000).

Each of the five potentially impacted small RLV entities is expected to average about seven missions per year over the next 15 years. Using $50 million as an average expected revenue per mission, each entity will be expected to receive about $350 million in revenue ($50m × 7 missions annually) for all missions annually. The FAA has determined that none of the five small entities will incur a significant economic impact, since the average annualized cost of compliance ($681,000) will be only 0.2 percent of the anticipated average annual revenues of $350 for missions conducted annually.

The FAA certifies that the final rule will not impose a significant economic impact on a substantial number of small businesses. Therefore, a regulatory flexibility analysis is not required. Furthermore, the final rule is not likely to cause small business failures or adversely impact their competitive position relative to larger businesses.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of U.S. goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect effect on any trade-sensitive activity.

Unfunded Mandates Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

Based on those impacts shown in the costs and benefits sections of the regulatory evaluation, the final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to the final rule for RLV Reentry and Licensing Requirements.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(i), regulatory documents which cover administrative or procedural requirements qualify for a categorical exclusion. Proposed §§ 431.91, 431.93, 433.7, 433.9, and 435.61 would require an applicant to submit sufficient environmental information for the FAA to comply with NEPA and other applicable environmental laws and regulations during the processing of each license application. Accordingly, the FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from implementation of its administrative provisions for licensing.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 400

Space transportation and exploration.

14 CFR Part 401

Organization and functions (Government agencies), Space transportation and exploration.

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 405

Investigations, Penalties, Space transportation and exploration.

14 CFR Part 406

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 413

Confidential business information, Space transportation and exploration.

14 CFR Part 415

Aviation safety, Environmental protection, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements,

Rockets, Space transportation and exploration.

14 CFR Part 433

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

14 CFR Part 435

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 400, 401, 404, 405, 406, 413, and 415, of Chapter III Title 14, Code of Federal Regulations and adds parts 431, 433 and 435 as follows:

PART 400—BASIS AND SCOPE

1. The authority citation for part 400 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

2. Section 400.2 is revised to read as follows:

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 49 U.S.C. Subtitle IX, chapter 701, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to amateur rocket activities or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

3. The authority citation for part 401 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

4. Section 401.5 is revised to read as follows:

§ 401.5 Definitions.

As used in this chapter—

Act means 49 U.S.C. Subtitle IX, Commercial Space Transportation, ch. 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70121.

Amateur rocket activities means launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient-*i.e.,* gross weight in pounds divided by frontal area of rocket vehicle-less than 12 pounds per square inch.

Associate Administrator means the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, or any person designated by the Associate Administrator to exercise the authority or discharge the responsibilities of the Associate Administrator.

Contingency abort means cessation of vehicle flight during ascent or descent in a manner that does not jeopardize public health and safety and the safety of property, in accordance with mission rules and procedures. Contingency abort includes landing at an alternative location that has been designated as a contingency abort location in advance of vehicle flight.

Emergency abort means cessation of vehicle flight during ascent or descent in a manner that minimizes risk to public health and safety and the safety of property. Emergency abort involves failure of a vehicle, safety-critical system, or flight safety system such that contingency abort is not possible.

Federal launch range means a launch site, from which launches routinely take place, that is owned and operated by the government of the United States.

Flight safety system means a system designed to limit or restrict the hazards to public health and safety and the safety of property presented by a launch vehicle or reentry vehicle while in flight by initiating and accomplishing a controlled ending to vehicle flight. A flight safety system may be destructive resulting in intentional break up of a vehicle or nondestructive, such as engine thrust termination enabling vehicle landing or safe abort capability.

Hazardous materials means hazardous materials as defined in 49 CFR 172.101.

Launch means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes activities involved in the preparation of a launch vehicle for flight, when those activities take place at a launch site in the United States. The term launch includes the flight of a launch vehicle and pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site. For purposes of an ELV launch, flight ends after the licensee's last exercise of control over its launch vehicle. For purposes of an orbital RLV launch, flight ends after deployment of a payload for an RLV having payload deployment as a mission objective. For other orbital RLVs, flight ends upon completion of the first sustained, steady-state orbit of an RLV at its intended location.

Launch accident means

(1) A fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the flight;

(2) Any damage estimated to exceed $25,000 to property not associated with the flight that is not located at the launch site or designated recovery area.

(3) An unplanned event occurring during the flight of a launch vehicle resulting in the known impact of a launch vehicle, its payload or any component thereof:

(i) For an expendable launch vehicle (ELV), outside designated impact limit lines; and

(ii) For an RLV, outside a designated landing site.

Launch incident means an unplanned event occurring during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or safety-critical system or failure of the licensee's safety organization, design or operations.

Launch operator means a person who conducts or who will conduct the launch of a launch vehicle and any payload.

Launch site means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities at that location.

Launch vehicle means a vehicle built to operate in, or place a payload in, outer space or a suborbital rocket.

Mishap means a launch or reentry accident, launch or reentry incident, failure to complete a launch or reentry as planned, or an unplanned event or series of events resulting in a fatality or serious injury (as defined in 49 CFR 830.2), or resulting in greater than $25,000 worth of damage to a payload, a launch or reentry vehicle, a launch or reentry support facility or government property located on the launch or reentry site.

Operation of a launch site means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads.

Operation of a reentry site means the conduct of safety operations at a permanent site on Earth at which a reentry vehicle and its payload, if any, is intended to land.

Payload means an object that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

Person means an individual or an entity organized or existing under the laws of a state or country.

Reenter; reentry means to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth. The term ''reenter; reentry'' includes activities conducted in Earth orbit or outer space to determine reentry readiness and that are critical to ensuring public health and safety and the safety of property during reentry flight. The term ''reenter; reentry'' also includes activities conducted on the ground after vehicle landing on Earth to ensure the reentry vehicle does not pose a threat to public health and safety or the safety of property.

Reentry accident means any unplanned event occurring during the reentry of a reentry vehicle resulting in the known impact of the reentry vehicle, its payload, or any component thereof outside a designated reentry site; a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the reentry; or any damage estimated to exceed $25,000 to property not associated with the reentry and not located within a designated reentry site.

Reentry incident means any unplanned event occurring during the reentry of a reentry vehicle, other than a reentry accident, involving a malfunction of a reentry safety-critical system or failure of the licensee's safety organization, procedures, or operations.

Reentry operator means a person responsible for conducting the reentry of a reentry vehicle as specified in a license issued by the FAA.

Reentry site means the location on Earth where a reentry vehicle is intended to return. It includes the area within three standard deviations of the intended landing point (the predicted three-sigma footprint).

Reentry vehicle means a vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reusable launch vehicle that is designed to return from Earth orbit or outer space to Earth substantially intact is a reentry vehicle.

Reusable launch vehicle (RLV) means a launch vehicle that is designed to return to Earth substantially intact and therefore may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use in the operation of a substantially similar launch vehicle.

Safety-critical means essential to safe performance or operation. A safety-critical system, subsystem, condition, event, operation, process or item is one whose proper recognition, control, performance or tolerance is essential to system operation such that it does not jeopardize public safety.

Vehicle safety operations personnel means those persons whose job performance is critical to public health and safety or the safety of property during RLV or reentry operations.

State and United States means, when used in a geographical sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

United States citizen means:

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and

(3) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraph (1) or (2) of this definition. *Controlling interest* means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraph (1) or (2) of this definition creates a rebuttable presumption that such interest is controlling.

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

5. The authority citation for part 404 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121

6. Section 404.1 is revised to read as follows:

§ 404.1 Scope.

Under 49 U.S.C. 70105, this part establishes procedures for issuing regulations to implement the provisions of 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space transportation activities under 49 U.S.C. Subtitle IX, chapter 701.

7. Section 404.3 is amended by revising the heading and paragraph (a) to read as follows:

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to issue, amend, or repeal a regulation to eliminate as a requirement for a license any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites or to waive any such requirement in the context of a specific application for a license.

* * * * *

PART 405—INVESTIGATIONS AND ENFORCEMENT

8. The authority citation for part 405 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

9. Section 405.1 is revised to read as follows:

§ 405.1 Monitoring of licensed and other activities.

Each licensee must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to observe licensed facilities and activities, including launch sites and reentry sites, as well as manufacturing, production, and testing facilities, or assembly sites used by any contractor or a licensee in the production, assembly, or testing of a launch or reentry vehicle and in the integration of a payload with its launch or reentry vehicle. Observations are conducted to monitor the activities of the licensee or contractor at such time and to such extent as the Associate Administrator considers reasonable and necessary to determine compliance with the license or to perform the Associate Administrator's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

10. Section 405.5 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 405.5 Emergency orders.

The Associate Administrator may immediately terminate, prohibit, or suspend a licensed launch, reentry, or operation of a launch or reentry site if the Associate Administrator determines that—

(a) The licensed launch, reentry, or operation of a launch or reentry site is detrimental to public health and safety, the safety of property, or any national security or foreign policy interest of the United States; and

* * * * *

PART 406—ADMINISTRATIVE REVIEW

11. The authority citation for part 406 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121

12. Section 406.1 is amended by revising paragraphs (a), introductory text, (a)(2), and (a)(3) to read as follows:

§ 406.1 Hearings.

(a) Pursuant to 49 U.S.C. 70110, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with 5 U.S.C. 554.

(1) * * *

(2) An owner or operator of a payload regarding any decision to prevent the launch or reentry of the payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license or to terminate, prohibit, or suspend any licensed activity; and

* * * * *

PART 413—LICENSE APPLICATION PROCEDURES

13. The authority citation for part 413 continues to read as follows:

Authority: 49 U.S.C. 70101–70121

14. Section 413.1 is revised to read as follows:

§ 413.1 Scope.

This part prescribes the procedures applicable to applications submitted under this chapter to conduct licensed activities. These procedures apply to all applications for issuance of a license, transfer of an existing license, and renewal of an existing license. More specific requirements applicable to obtaining a launch license or a license to operate a launch site are contained in parts 415 and 417 of this chapter, respectively. More specific requirements applicable to obtaining a license to launch and reenter a reentry vehicle or to operate a reentry site are contained in parts 431, 433 and 435 of this chapter.

15. Section 413.3 is revised to read as follows:

§ 413.3 Who must obtain a license.

(a) A person must obtain a license—

(1) To launch a launch vehicle from the United States;

(2) To operate a launch site within the United States;

(3) To reenter a reentry vehicle in the United States; or

(4) To operate a reentry site within the United States.

(b) An individual who is a U.S. citizen or an entity organized under the laws of the United States or any State must obtain a license—

(1) To launch a launch vehicle outside the United States;

(2) To operate a launch site outside of the United States;

(3) To reenter a reentry vehicle outside of the United States; or

(4) To operate a reentry site outside of the United States.

(c) A foreign entity in which a United States citizen has a controlling interest, as defined in § 401.5 of this chapter, must obtain a launch license to launch a launch vehicle from or a license to operate a launch site within—

(1) Any place that is both outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the launch or the operation of the launch site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the launch or the operation of the launch site.

(d) A foreign entity in which a U.S. citizen has a controlling interest, as defined in § 401.5 of this chapter, must obtain a license to reenter a reentry vehicle or to operate a reentry site in—

(1) Any place that is outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the reentry or the operation of the reentry site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the reentry or the operation of the reentry site.

PART 415—LAUNCH LICENSE

16. The authority citation for part 415 continues to read as follows:

Authority: 49 U.S.C. 70101–70121

17. Section 415.1 is revised to read as follows:

§ 415.1 Scope.

This part prescribes requirements for obtaining a license to launch a launch vehicle, other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter. Requirements for obtaining a license to launch an RLV and conduct an RLV mission are contained in part 431 of this subchapter.

18. Part 431 is added to read as follows:

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

Subpart A—General

Sec.

431.1 Scope.
431.3 Types of reusable launch vehicle mission licenses.
431.5 Policy and safety approvals.
431.7 Payload and payload reentry determinations.
431.9 Issuance of a reusable launch vehicle mission license.
431.11 Additional license terms and conditions.
431.13 Transfer of a reusable launch vehicle mission license.
431.15 Rights not conferred by a reusable launch vehicle mission license.
431.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

431.21 General.
431.23 Policy review.
431.25 Application requirements for policy review.
431.27 Denial of policy approval.
431.28–431.30 [Reserved]

Subpart C—Safety Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

431.31 General.
431.33 Safety organization.
431.35 Acceptable reusable launch vehicle mission risk.
431.37 Mission readiness.
431.39 Mission rules, procedures, contingency plans, and checklists.
431.41 Communications plan.
431.43 Reusable launch vehicle mission operational requirements and restrictions.
431.45 Mishap investigation plan and emergency response plan.
431.47 Denial of safety approval.
431.48–431.50 [Reserved]

Subpart D—Payload Reentry Review and Determination

431.51 General.
431.53 Classes of payloads.
431.55 Payload reentry review.
431.57 Information requirements for payload reentry review.
431.59 Issuance of payload reentry determination.
431.61 Incorporation of payload reentry determination in license application.
431.62–431.70 [Reserved]

Subpart E—Post-Licensing Requirements-Reusable Launch Vehicle Mission License Terms and Conditions

431.71 Public safety responsibility.
431.73 Continuing accuracy of license application; application for modification of license.
431.75 Agreements.
431.77 Records.
431.79 Reusable launch vehicle mission reporting requirements.

431.81 Financial responsibility requirements.
431.83 Compliance monitoring.
431.85 Registration of space objects.
431.86–431.90 [Reserved]

Subpart F—Environmental Review

431.91 General.
431.93 Environmental information.

Authority: 49 U.S.C. 70101–70121

Subpart A—General

§ 431.1 Scope.

This part prescribes requirements for obtaining a reusable launch vehicle (RLV) mission license and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§ 431.3 Types of reusable launch vehicle mission licenses.

(a) *Mission-specific license.* A mission-specific license authorizing an RLV mission authorizes a licensee to launch and reenter, or otherwise land, one model or type of RLV from a launch site approved for the mission to a reentry site or other location approved for the mission. A mission-specific license authorizing an RLV mission may authorize more than one RLV mission and identifies each flight of an RLV authorized under the license. A licensee's authorization to conduct RLV missions terminates upon completion of all activities authorized by the license or the expiration date stated in the reentry license, whichever occurs first.

(b) *Operator license.* An operator license for RLV missions authorizes a licensee to launch and reenter, or otherwise land, any of a designated family of RLVs within authorized parameters, including launch sites and trajectories, transporting specified classes of payloads to any reentry site or other location designated in the license. An operator license for RLV missions is valid for a two-year renewable term.

§ 431.5 Policy and safety approvals.

To obtain either type of RLV mission license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part. Only the license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 431.7 Payload and payload reentry determinations.

(a) A payload determination is required to launch a payload unless the proposed payload is exempt from payload review under § 415.53 of this chapter. Requirements for obtaining a payload determination are set forth in part 415, subpart D of this chapter.

(b) A payload reentry determination is required to reenter a payload to Earth on an RLV unless the proposed payload is exempt from payload reentry review.

(c) A payload reentry determination made under a previous license application under this subchapter may satisfy the requirements of paragraph (b) of this section.

(d) The FAA conducts a review, as described in subpart D of this part, to make a payload reentry determination. Either an RLV mission license applicant or a payload owner or operator may request a review of the proposed payload using the application procedures contained in part 413 of thissubchapter. Upon receipt of an application, the FAA may conduct a payload reentry review independently of an RLV mission license application.

§ 431.9 Issuance of a reusable launch vehicle mission license.

(a) The FAA issues either a mission-specific or operator license authorizing RLV missions to an applicant who has obtained all approvals and determinations required under this chapter for the license.

(b) An RLV mission license authorizes a licensee to launch and reenter, or otherwise land, an RLV and payload, if any, in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the license, including financial responsibilityrequirements.

§ 431.11 Additional license terms and conditions.

The FAA may amend an RLV mission license at any time by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicable regulations.

§ 431.13 Transfer of a reusable launch vehicle mission license.

(a) Only the FAA may transfer an RLV mission license.

(b) An applicant for transfer of an RLV mission license shall submit a license application in accordance with part 413 of this subchapter and satisfy the applicable requirements of this part. The FAA will transfer an RLV mission license to an applicant who has obtained all of the approvals and determinations required under this chapter for an RLV mission license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate any findings made part of the record to support the initial licensing determination. The FAA may modify an RLV mission license to reflect any changes necessary as a result of a license transfer.

§ 431.15 Rights not conferred by a reusable launch vehicle mission license.

Issuance of an RLV mission license does not relieve a licensee of its obligation to comply with requirements of law that may apply to its activities.

§§ 431.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

§ 431.21 General.

The FAA issues a policy approval to an RLV mission license applicant upon completion of a favorable policy review. A policy approval is part of the licensing record on which the licensing determination is based.

§ 431.23 Policy review.

(a) The FAA reviews an RLV mission license application to determine whether the proposed mission presents any issues, other than those issues addressed in the safety review, that would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States.

(b) Interagency consultation is conducted as follows:

(1) The FAA consults with the Department of Defense to determine whether an RLV mission license application presents any issues adversely affecting U.S. nationalsecurity.

(2) The FAA consults with the Department of State to determine whether an RLV mission license application presents any issues adversely affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other Federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section, associated with an applicant's RLV mission proposal.

(c) The FAA advises an applicant, in writing, of any issueraised during a policy review that would impede issuance of a policy approval. The

applicant may respond, in writing, or revise its license application.

§ 431.25 Application requirements for policy review.

In its RLV mission license application, an applicant must—

(a) Identify the model, type, and configuration of any RLV proposed for launch and reentry, or otherwise landing on Earth, by the applicant.

(b) Identify all vehicle systems, including structural, thermal, pneumatic, propulsion, electrical, and avionics and guidance systems used in the vehicle(s), and all propellants.

(c) Identify foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership;

(2) For a corporation, identify any foreign ownership interests of 10% or more; and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

(d) Identify proposed launch and reentry flight profile(s), including—

(1) Launch and reentry site(s), including planned contingency abort locations, if any;

(2) Flight trajectories, reentry trajectories, associated ground tracks, and instantaneous impact points for nominal operations, and contingency abort profiles, if any;

(3) Sequence of planned events or maneuvers during the mission; and for an orbital mission, the range of intermediate and final orbits of the vehicle and upper stages, if any, and their estimated orbital life times.

§ 431.27 Denial of policy approval.

The FAA notifies an applicant, in writing, if the FAA hasdenied policy approval for an RLV mission license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 431.28–431.30 [Reserved]

Subpart C—Safety Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

§ 431.31 General.

(a) The FAA conducts a safety review to determine whether an applicant is capable of launching an RLV and payload, if any, from a designated launch site, and reentering the RLV and payload, if any, to a designated reentry site or location, or otherwise landing it on Earth, without jeopardizing public health and safety and the safety of property.

(b) The FAA issues a safety approval to an RLV mission license applicant that satisfies the requirements of this Subpart. The FAA evaluates on an individual basis all public safety aspects of a proposed RLV mission to ensure they are sufficient to support safe conduct of the mission.A safety approval is part of the licensing record on which the FAA's licensing determination is based.

(c) The FAA advises an applicant, in writing, of any issueraised during a safety review that would impede issuance of a safety approval. The applicant may respond, in writing, or revise its license application.

§ 431.33 Safety organization.

(a) An applicant shall maintain a safety organization and document it by identifying lines of communication and approval authority for all mission decisions that may affect public safety. Lines of communication within the applicant's organization, between the applicant and the launch site, and between the applicant and the reentry site,shall be employed to ensure that personnel perform RLV mission operations in accordance with plans and proceduresrequired by this subpart. Approval authority shall beemployed to ensure compliance with terms and conditionsstated in an RLV mission license and with the plans and procedures required by this subpart.

(b) An applicant must designate a person responsible for the conduct of all licensed RLV mission activities.

(c) An applicant shall designate by name, title, and qualifications, a qualified safety official authorized by the applicant to examine all aspects of the applicant's operations with respect to safety of RLV mission activities and to monitor independently compliance by vehicle safety operations personnel with the applicant's safety policies and procedures. The safety official shallreport directly to the person responsible for an applicant's licensed RLV mission activities, who shall ensure that all of the safety official's concerns are addressed both before a mission is initiated and before reentry or descent flight of an RLV is initiated. The safety official is responsible for—

(1) Monitoring and evaluating operational dress rehearsals to ensure they are conducted in accordance with proceduresrequired by § 431.37(a)(4) and under § 431.37(a)(1)(iv) to ensure the readiness of vehiclesafety operations personnel to conduct a safe mission under nominal and non-nominal conditions; and

(2) Completing a mission readiness determination as required by § 431.37 before an RLV mission is initiated. The safety official must monitor and report to the person responsible for the conduct of licensed RLV mission activities any non-compliance with procedures listed in §§ 431.37 and 431.43, or any representation contained in the application, and the readiness of the licensee to conduct mission operations in accordance with the license and this part. The safety official is responsible for compliance with §§ 431.37 and 431.43, and with representations contained in the application.

§ 431.35 Acceptable reusable launch vehicle mission risk.

(a) To obtain safety approval for an RLV mission, an applicant must demonstrate that the proposed mission does not exceed acceptable risk as defined in this subpart. For purposes of this section, the mission commences upon initiation of the launch phase of flight and consists of launch flight through orbital insertion of an RLV or vehiclestage or flight to outer space, whichever is applicable, and reentry or descent flight, and concludes upon landing on Earth of the RLV.

(b) Acceptable risk for a proposed mission is measured in terms of the expected average number of casualties (E_c).

(1) To obtain safety approval, an applicant shalldemonstrate:

(i) For public risk, the risk level to the collective members of the public exposed to vehicle or vehicle debris impact hazards associated with a proposed mission does notexceed an expected average number of 0.00003 casualties per mission (or E_c criterion of 30×10^{-6}) to members of the public from the applicant's proposed activity; and

(ii) For public risk, the risk level to an individual does not exceed .000001 per mission (or individual risk criterion of 1×10^{-6}).

(c) To demonstrate compliance with acceptable risk criteria in thissection, an applicant shall employ a system safety process to identify the hazards and assess the risks to publichealth and safety and the safety of property associated with the mission, including nominal and non-nominal operation and flight of the vehicle and payload, if any. An acceptablesystem safety analysis identifies and assesses the probability and consequences of any reasonably foreseeablehazardous event, and safety-critical system failures during launch flight or reentry that could result in a casualty to the public.

(d) As part of the demonstration required under paragraph (c) of this section, an applicant must—

(1) Identify and describe the structure of the RLV, including physical dimensions and weight;

(2) Identify and describe any hazardous materials, including radioactive materials, and their container on the RLV;

(3) Identify and describe safety-critical systems;

(4) Identify and describe all safety-critical failure modes and their consequences;

(5) Provide drawings and schematics for each

safety-critical system identified under paragraph (d) (3) of this section;

(6) Provide a timeline identifying all safety-critical

events;

(7) Provide data that validates the applicant's system safety analyses required in paragraph (c) of this section; and

(8) Provide flight trajectory analyses covering launch or ascent of the vehicle through orbital insertion and reentry or descent of the vehicle through landing, including its three-sigma dispersion.

§ 431.37 Mission readiness.

(a) *Mission readiness requirements.* An applicant shall submit the following procedures for verifying mission readiness:

(1) Mission readiness review procedures that involve the applicant's vehicle safety operations personnel, and launch site and reentry site personnel involved in the mission. The procedures shall ensure a mission readiness review is conducted during which the designated individual responsible for the conduct of licensed activities under § 431.33(b) is provided with the following information to make a judgment as to mission readiness—

(i) Readiness of the RLV including safety-critical systems and payload for launch and reentry flight;

(ii) Readiness of the launch site, personnel, and safety-related launch property and launch services to be provided by the launch site;

(iii) Readiness of the reentry site, personnel, and safety-related property and services for reentry flight and vehicle recovery;

(iv) Readiness of vehicle safety operations personnel to support mission flight, including results of dress rehearsals and simulations conducted in accordance with paragraph (a)(4) of this section;

(v) Mission rules and constraints, including contingency abort plans and procedures, if any, as required under § 431.39;

(vi) Unresolved safety issues identified during the mission readiness review and plans for addressing them; and

(vii) Any additional safety information required by the individual designated under § 431.33(b) to determine launch and reentry readiness.

(2) Procedures that ensure mission constraints, rules, contingency abort and emergency abort procedures are listed and consolidated in a safety directive or notebook approved by the person designated by the applicant under § 431.33(b), the launch site operator, and the reentry site operator, if any;

(3) Procedures that ensure currency and consistency of licensee, launch site operator, and reentry site operator checklists;

(4) Dress rehearsal procedures that—

(i) Ensure crew readiness under nominal and non-nominal flight conditions;

(ii) Contain criteria for determining whether to dispense with or add one or more dress rehearsals; and

(iii) Verify currency and consistency of licensee, launch site operator, and reentry site operator checklists; and

(5) Procedures for ensuring the licensee's vehicle safety operations personnel adhere to crew rest rules of this part.

(b) [Reserved]

§ 431.39 Mission rules, procedures, contingency plans, and checklists.

(a) An applicant shall submit mission rules, procedures, checklists, emergency plans, and contingency abort plans, if any, that ensure safe conduct of mission operations during nominal and non-nominal vehicle flight.

(b) Mission rules, procedures, checklists, emergency plans, and contingency abort plans must be contained in a safety directive, notebook, or other compilation that is approved by the safety official designated under § 431.33(c) and concurred in by the launch site operator and reentry site operator, if any.

(c) Vehicle safety operations personnel must have current and consistent mission checklists.

§ 431.41 Communications plan.

(a) An applicant shall submit a plan providing vehicle safety operations personnel communications procedures during the mission. Procedures for effective issuance and communication of safety-critical information during the mission shall include hold/resume, go/no go, contingency abort, if any, and emergency abort commands by vehicle safety operations personnel. The communications plan shall describe the authority of vehicle safety operations personnel, by individual or position title, to issue these commands. The communications plan shall ensure that—

(1) Communication networks are assigned so that personnel identified under this section have direct access to real-time, safety-critical information required for making decisions and issuing commands;

(2) Personnel identified under this section monitor a common intercom channel for safety-critical communications during launch and reentry;

(3) A protocol is established for utilizing defined radio communications terminology; and

(4) Communications affecting the safety of the mission are recorded in a manner that accurately reflects communications made on individual channels, synchronized time coding, and sequence of communications.

(b) An applicant shall submit procedures to ensure that licensee and reentry site personnel, if any, receive a copy of the communications plan required by this section and that the reentry site operator, if any, concurs with the communications plan.

§ 431.43 Reusable launch vehicle mission operational requirements and restrictions.

(a) An applicant for RLV mission safety approval shall submit procedures—

(1) That ensure RLV mission risks do not exceed the criteria set forth in § 431.35 for nominal and non-nominal operations;

(2) That ensure conformance with the system safety process and associated hazard identification and risk assessment required under § 431.35(c);

(3) That ensure conformance with operational restrictions listed in paragraphs (c) through (e) of this section;

(4) To monitor and verify the status of RLV safety-critical systems sufficiently before enabling both launch and reentry flight to ensure public safety and during mission flight unless technically infeasible; and

(5) For human activation or initiation of a flight safety system that safely aborts the launch of an RLV if the vehicle is not operating within approved mission parameters and the vehicle poses risk to public health and safety and the safety of property in excess of acceptable flight risk as defined in § 431.35.

(b) To satisfy risk criteria set forth in § 431.35(b)(1), an applicant for RLV mission safety approval shall identify suitable and attainable locations for

nominal landing and vehicle staging impact or landing, if any. An application shall identify such locations for a contingency abort if necessary to satisfy risk criteria contained in § 431.35(b)(1) during launch of an RLV. A nominal landing, vehicle staging impact and contingency abort location are suitable for launch or reentry if—

(1) For any vehicle or vehicle stage, the area of the predicted three-sigma dispersion of the vehicle or vehicle stage can be wholly contained within the designated location; and

(2) The location is of sufficient size to contain landing impacts, including debris dispersion upon impact and any toxic release.

(c) For an RLV mission—

(1) A collision avoidance analysis shall be performed in order to maintain at least a 200-kilometer separation from any inhabitable orbiting object during launch and reentry. The analysis shall address:

(i) For launch, closures in a planned launch window for ascent to outer space or, for an orbital RLV, to initial orbit through at least one complete orbit;

(ii) For reentry, the reentry trajectory;

(iii) Expansions of the closure period by subtracting 15 seconds from the closure start-time and adding 15 seconds to the closure end-time for each sequential 90 minutes elapsed time period, or portion there of, beginning at the time the state vectors of the orbiting objects were determined;

(2) The projected instantaneous impact point (IIP) of the vehicle shall not have substantial dwell time over densely populated areas during any segment of mission flight;

(3) There will be no unplanned physical contact between the vehicle or its components and payload after payload separation and debris generation will not result from conversion of energy sources into energy that fragments the vehicle or its payload. Energy sources include, but are not limited to, chemical, pneumatic, and kinetic energy; and

(4) Vehicle safety operations personnel shall adhere to the following work and rest standards:

(i) A maximum 12-hour work shift with at least 8 hours of rest after 12 hours of work, preceding initiation of an RLV reentry mission or during the conduct of a mission;

(ii) A maximum of 60 hours worked in the 7 days, preceding initiation of an RLV mission;

(iii) A maximum of 14 consecutive work days; and

(iv) A minimum 48-hour rest period after 5 consecutive days of 12-hour shifts.

(d) In addition to requirements of paragraph (c) of this section, any unproven RLV may only be operated so that during any portion of flight—

(1) The projected instantaneous impact point (IIP) of the vehicle does not have substantial dwell time over populated areas; or

(2) The expected average number of casualties to members of the public does not exceed 30×10^{-6} ($E_c \leq 30 \times 10^{-6}$) given a probability of vehicle failure equal to 1 (pf=1) at any time the IIP is over a populated area;

(e) Any RLV that enters Earth orbit may only be operated such that the vehicle operator is able to—

(1) Monitor and verify the status of safety-critical systems before enabling reentry flight to assure the vehicle can reenter safely to Earth; and

(2) Issue a command enabling reentry flight of the vehicle. Reentry flight cannot be initiated autonomously under nominal circumstances without prior enable.

§ 431.45 Mishap investigation plan and emergency response plan.

(a) *Mishap investigation plan and emergency response plan.* An applicant shall submit a mishap investigation plan (MIP) containing the applicant's procedures for reporting and responding to launch and reentry accidents, launch and reentry incidents, or other mishaps, as defined in § 401.5 of this chapter, that occur during the conduct of an RLV mission. An acceptable MIP satisfies the requirements of paragraphs (b)–(d) of this section. An applicant shall also submit an emergency response plan (ERP) that contains procedures for informing the affected public of a planned RLV mission. An acceptable ERP satisfies the requirements of paragraph (e) of this section. The MIP and ERP shall be signed by an individual authorized to sign and certify the application in accordance with § 413.7(c) of this chapter, the person responsible for the conduct of all licensed RLV mission activities designated under § 431.33(b) of this subpart, and the safety official designated under § 431.33(c) of this subpart.

(b) *Report requirements.* A MIP shall provide for—

(1) Immediate notification to the FAA Washington Operations Center in case of a launch or reentry accident, launch or reentry incident, or a mishap that involves a fatality or serious injury (as defined in 49 CFR 830.2);

(2) Notification within 24 hours to the Associate Administrator for Commercial Space Transportation in the event of a mishap that does not involve a fatality or serious injury, as defined in 49 CFR 830.2; and

(3) Submission of a written preliminary report to the FAA Associate Administrator for Commercial Space Transportation in the event of a launch accident or launch incident occurring in the conduct of an RLV mission, or reentry accident or reentry incident, occurring in the conduct of an RLV mission, within 5 days of the event. The report shall identify the event as either a launch or reentry accident or incident and must include the following information:

(i) Date and time of occurrence;

(ii) Description of the event and sequence of events leading to the accident or incident, to the extent known;

(iii) Intended and actual location of launch and reentry or other landing on Earth;

(iv) Identification of the vehicle;

(v) Identification of the payload, if applicable;

(vi) Number and general description of any fatalities and injuries;

(vii) Property damage, if any, and an estimate of its value;

(viii) Identification of hazardous materials, as defined in § 401.5 of this chapter, involved in the event, whether on the vehicle, payload, or on the ground;

(ix) Action taken by any person to contain the consequences of the event;

(x) Weather conditions at the time of the event; and

(xi) Potential consequences for other vehicles or systems of similar type and proposed operations.

(c) *Response plan.* A MIP must contain procedures to—

(1) Ensure the consequences of a launch accident, launch incident, reentry accident, reentry incident, or other mishap occurring in the conduct of an RLV mission are contained and minimized;

(2) Ensure data and physical evidence are preserved;

(3) Require the licensee to report and to cooperate with FAA and the National Transportation Safety Board investigations and designate one or more points of contact for the FAA or NTSB; and;

(4) Require the licensee to identify and adopt preventive measures for avoiding recurrence of the event.

(d) *Investigation plan.* A MIP shall contain—

(1) Procedures for investigating the cause of an event described in paragraph (c)(1) of this section;

(2) Procedures for reporting investigation results to the FAA;

(3) Delineated responsibilities, including reporting responsibilities, for

personnel assigned to conduct investigations and for any unrelated entities retained by the licensee to conduct or participate in investigations.

(e) *Emergency response plan.* An ERP shall provide for—

(1) Notification to local officials in the event of an off-site or unplanned landing so that vehicle recovery can be conducted safely and effectively and with minimal risk to public safety. The plan must provide for the quick dissemination of up to date information to the public, and for doing so in advance of reentry or other landing on Earth to the extent practicable; and

(2) A public information dissemination plan for informing the potentially affected public, in laymen's terms and in advance of a planned reentry, of the estimated date, time and landing location for the reentry activity.

§ 431.47 Denial of safety approval.

The FAA notifies an applicant, in writing, if the FAA has denied safety approval for an RLV mission license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 431.48–431.50 [Reserved]

Subpart D—Payload Reentry Review and Determination

§ 431.51 General.

(a) A payload reentry review is conducted to examine the policy and safety issues related to the proposed reentry of a payload, other than a U.S. Government payload or a payload whose reentry is subject to regulation by another Federal agency, to determine whether the FAA will approve reentry of the payload.

(b) A payload reentry review may be conducted as part of an RLV mission license application review or may be requested by a payload owner or operator in advance of or separate from an RLV mission license application.

(c) A payload reentry determination will be made part of the licensing record on which the FAA's licensing determination is based.

§ 431.53 Classes of payloads.

(a) The FAA may approve the return of a type or class of payload (for example, communications or microgravity/scientific satellites).

(b) The RLV mission licensee that will return a payload approved for reentry under this section, is responsible for providing current information in accordance with § 431.57 regarding the payload proposed for reentry no later than 60 days before a scheduled RLV mission involving that payload.

§ 431.55 Payload reentry review.

(a) In conducting a payload reentry review to decide if the FAA should approve reentry of a payload, the FAA determines whether its reentry presents any issues that would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States.

(b) The FAA consults with the Department of Defense to determine whether reentry of a proposed payload presents any issues adversely affecting U.S. national security.

(c) The FAA consults with the Department of State to determine whether reentry of a proposed payload presents any issues adversely affecting U.S. foreign policy interests or international obligations.

(d) The FAA consults with other Federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section.

(e) The FAA advises a person requesting a payload reentry determination, in writing, of any issue raised during a payload reentry review that would impede the issuance of a favorable determination to reenter that payload. The person requesting a payload reentry review may respond, in writing, or revise its application.

§ 431.57 Information requirements for payload reentry review.

A person requesting reentry review of a particular payload or payload class must identify the following:

(a) Payload name or class and function;

(b) Physical characteristics, dimensions, and weight of the payload;

(c) Payload owner and operator, if different from the person requesting the payload reentry review;

(d) Type, amount, and container of hazardous materials, as defined in § 401.5 of this chapter, and radioactive materials in the payload;

(e) Explosive potential of payload materials, alone and in combination with other materials found on the payload or RLV during reentry;

(f) Designated reentry site(s); and

(g) Method for securing the payload on the RLV.

§ 431.59 Issuance of payload reentry determination.

(a) The FAA issues a favorable payload reentry determination unless it determines that reentry of the proposed payload would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States. The FAA responds to any person who has requested a payload reentry review of its determination in writing. The notice states the reasons for the determination in the event of an unfavorable determination.

(b) Any person issued an unfavorable payload reentry determination may respond to the reasons for the determination and request reconsideration.

§ 431.61 Incorporation of payload reentry determination in license application.

A favorable payload reentry determination issued for a payload or class of payload may be included by an RLV mission license applicant as part of its application. Before the conduct of an RLV mission involving a payload approved for reentry, any change in information provided under § 431.57 must be reported by the licensee in accordance with § 413.17 of this chapter. The FAA determines whether a favorable payload reentry determination remains valid and may conduct an additional payload reentry review.

§§ 431.62–431.70 [Reserved]

Subpart E—Post-Licensing Requirements—Reusable Launch Vehicle Mission License Terms and Conditions

§ 431.71 Public safety responsibility.

(a) A licensee is responsible for ensuring the safe conduct of an RLV mission and for protecting public health and safety and the safety of property during the conduct of the mission.

(b) A licensee must conduct a licensed RLV mission and perform RLV safety procedures in accordance with representations made in its license application. A licensee's failure to perform safety procedures in accordance with the representations made in the license application or comply with any license condition is sufficient basis for the revocation of a license or other appropriate nforcement action.

§ 431.73 Continuing accuracy of license application; application for modification of license.

(a) A licensee is responsible for the continuing accuracy of representations contained in its application for the entire term of the license.

(b) After a license has been issued, a licensee must apply to the FAA for modification of the license if—

(1) The licensee proposes to conduct an RLV mission or perform a safety-critical operation in a manner not authorized by the license; or

(2) Any representation contained in the license application that is material to public health and safety or the safety of property is no longer accurate and complete or does not reflect the licensee's procedures governing the actual conduct of an RLV mission. A change is material to public health and safety or the safety of property if it alters or affects the—

(i) Mission rules, procedures, checklists, emergency plans, and contingency abort plans, if any, submitted in accordance with § 431.39

(ii) Class of payload;

(iii) Type of RLV;

(iv) Any safety-critical system;

(v) Type and container of the hazardous material carried by the vehicle;

(vi) Flight trajectory;

(vii) Launch site or reentry site or other landing location; or

(viii) Any safety system, policy, procedure, requirement, criteria, or standard.

(c) An application to modify an RLV mission license must be prepared and submitted in accordance with part 413 of this chapter. The licensee must indicate any part of its license or license application that would be changed or affected by a proposed modification.

(d) The FAA reviews determinations and approvals required by this chapter to determine whether they remain valid after submission of a proposed modification.

(e) Upon approval of a modification, the FAA issues either a written approval to the licensee or a license order amending the license if a stated term or condition of the license is changed, added, or deleted. An approval has the full force and effect of a license order and is part of the licensing record.

§ 431.75 Agreements.

(a) *Launch and reentry site use agreements.* Before conducting a licensed RLV mission using property and services of a Federal launch range or licensed launch or reentry site operator, a licensee or applicant shall enter into an agreement with the Federal launch range and/or licensed site operator that provides for access to and use of property and services required to support a licensed RLV mission or reentry and for public safety related operations and support. The agreement shall be in effect before any licensed RLV mission or reentry. A licensee shall comply with any requirements of the agreement that may affect public health and safety and the safety of property during the conduct of its licensed activity.

(b) *Agreements for notices to mariners and airmen.* Unless otherwise addressed in agreements between a licensed launch site operator and the U.S. Coast Guard and the FAA, respectively, a licensee authorized to conduct an RLV mission using a launch site or reentry site other than a Federal launch range shall complete the following:

(1) An agreement between the licensee and the local U.S. Coast Guard district to establish procedures for the issuance of a Notice to Mariners prior to a launch or reentry and other measures as the Coast Guard deems necessary to protect public health and safety; and

(2) An agreement between the licensee and the FAA regional office having jurisdiction over the airspace through which a launch and reentry will take place, to establish procedures for the issuance of a Notice to Airmen prior to the conduct of a licensed launch or reentry and for closing of air routes during the respective launch and reentry windows and other measures deemed necessary by the FAA regional office in order to protect public health and safety.

§ 431.77 Records.

(a) Except as specified in paragraph (b) of this section, a licensee shall maintain for 3 years all records, data, and other material necessary to verify that a licensed RLV mission is conducted in accordance with representations contained in the licensee's application.

(b) In the event of a launch accident, reentry accident, launch incident or reentry incident, as defined in § 401.5 of this chapter, a licensee shall preserve all records related to the event. Records must be retained until completion of any Federal investigation and the FAA advises the licensee that the records need not be retained. The licensee shall make all records required to be maintained under the regulations available to Federal officials for inspection and copying.

§ 431.79 Reusable launch vehicle mission reporting requirements.

(a) Not less than 60 days before each RLV mission conducted under a license, a licensee shall provide the FAA with the following information:

(1) Payload information in accordance with 14 CFR § 415.59 of this chapter and § 431.57; and

(2) Flight information, including the vehicle, launch site, planned launch and reentry flight path, and intended landing sites including contingency abort sites.

(3) Launch or reentry waivers, approved or pending, from a federal Federal range for at which the launch or reentry will take place, that are unique and may affect public safety.

(b) Not later than 15 days before each licensed RLV mission, a licensee must notify the FAA, in writing, of the time and date of the intended launch and reentry or other landing on Earth of the RLV and may utilize the FAA/U.S. Space Command Launch Notification Form, contained in part 415, Appendix A, of this subchapter for doing so.

(c) A licensee must report a launch accident, launch incident, reentry accident, reentry incident, or other mishap immediately to the FAA Washington Operations Center and provide a written preliminary report in the event of a launch accident, launch incident, reentry accident, or reentry incident, in accordance with the mishap investigation and emergency response plan submitted as part of its license application under § 431.45.

§ 431.81 Financial responsibility requirements.

A licensee under this part must comply with financial responsibility requirements specified in its license.

§ 431.83 Compliance monitoring.

A licensee shall allow access by, and cooperate with, federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, or of the licensee's contractors or subcontractors, associated with the conduct of a licensed RLV mission.

§ 431.85 Registration of space objects.

(a) To assist the U.S. Government in implementing Article IV of the 1975 Convention on Registration of Objects Launched into Outer Space, each licensee shall provide to the FAA the information required by paragraph (b) of this section for all objects placed in space by a licensed RLV mission, including an RLV and any components, except:

(1) Any object owned and registered by the U.S. Government; and

(2) Any object owned by a foreign entity.

(b) For each object that must be registered in accordance with this section, a licensee shall submit the following information not later than thirty (30) days following the conduct of a licensed RLV mission :

(1) The international designator of the space object(s);

(2) Date and location of the RLV mission initiation;

(3) General function of the space object; and

(4) Final orbital parameters, including:

(i) Nodal period;

(ii) Inclination;

(iii) Apogee; and

(iv) Perigee.

(c) A licensee shall notify the FAA when it removes an object that it has previously placed in space.

§§ 431.86–431.90 [Reserved]

Subpart F—Environmental Review

§ 431.91 General.

An applicant shall provide the FAA with sufficient information to analyze the environmental impacts associated with proposed operation of an RLV, including the impacts of anticipated activities to be performed at its reentry site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D. Copies of FAA Order 1050.1D may be obtained from the Office of Environment and Energy, AEE–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3553. Copies of FAA Order 1050.1D may be inspected in the Rules Docket at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5:00 p.m.

§ 431.93 Environmental information.

An applicant shall submit environmental information concerning—

(a) A designated launch and reentry site, including contingency abort locations, if any, not covered by existing FAA or other Federal environmental documentation;

(b) A proposed new RLV with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) A proposed reentry to an established reentry site involving an RLV with characteristics falling measurably outside the parameters of existing environmental impact statements covering that site;

(d) A proposed payload that may have significant environmental impacts in the event of a reentry accident; and

(e) Other factors as necessary to comply with the National Environmental Policy Act.

19. Part 433 is added to read as follows:

PART 433—LICENSE TO OPERATE A REENTRY SITE

Subpart A—General

Sec.
433.1 General.
433.3 Issuance of a license to operate a reentry site.
433.5 Operational restrictions on a reentry site.
433.7 Environmental.
433.9 Environmental information.

Authority: 49 U.S.C. 70101–70121

§ 433.1 General.

The FAA evaluates on an individual basis an applicant's proposal to operate a reentry site.

§ 433.3 Issuance of a license to operate a reentry site.

(a) The FAA issues a license to operate a reentry site when it determines that an applicant's operation of the reentry site does not jeopardize public health and safety, the safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(b) A license to operate a reentry site authorizes a licensee to operate a reentry site in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in any license order accompanying the license.

§ 433.5 Operational restrictions on a reentry site.

A license to operate a reentry site authorizes the licensee to offer use of the site to support reentry of a reentry vehicle for which the three-sigma footprint of the vehicle upon reentry is wholly contained within the site.

§ 433.7 Environmental.

An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with proposed operation of a reentry site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1508, and the FAA's Procedures for Consideration Environmental Impacts, FAA Order 1050.1D.

§ 433.9 Environmental information.

An applicant shall submit environmental information concerning a proposed reentry site not covered by existing environmental documentation for purposes of assessing reentry impacts.

20. Part 435 is added to read as follows:

PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE (RLV)

Subpart A—General

Sec.
435.1 Scope.
435.3 Types of reentry licenses.
435.5 Policy and safety approvals.
435.7 Payload reentry determinations.
435.9 Issuance of a reentry license.
435.11 Additional license terms and conditions.
435.13 Transfer of a reentry license.
435.15 Rights not conferred by reentry license.
435.16–435.20 [Reserved]

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

435.21 General.
435.23 Policy review requirements and procedures.
435.24–435.30 [Reserved]

Subpart C—Safety Review and Approval for Reentry of a Reentry Vehicle

435.31 General.
435.33 Safety review requirements and procedures.
435.35 Acceptable reentry risk for reentry of a reentry vehicle.
435.36–435.40 [Reserved]

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435.41 General.
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435.44–435.50 [Reserved]

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

435.51 General.
435.52–435.60 [Reserved]

Subpart F—Environmental Review

435.61 General.
435.62–435.70 [Reserved]

Authority: 49 U.S.C. 70101–70121

Subpart A—General

§ 435.1 Scope.

This part prescribes requirements for obtaining a license to reenter a reentry vehicle other than a reusable launch vehicle (RLV), and post-licensing

requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§ 435.3 Types of reentry licenses.

(a) *Reentry-specific license.* A reentry-specific license authorizes a licensee to reenter one model or type of reentry vehicle, other than an RLV, to a reentry site or other location approved for the reentry. A reentry-specific license may authorize more than one reentry and identifieseach reentry authorized under the license. A licensee's authorization to reenter terminates upon completion of all activities authorized by the license or the expiration date stated in the reentry license, whichever occurs first.

(b) *Reentry-operator license.* A reentry operator license authorizes a licensee to reenter any of a designated family of reentry vehicles, other than an RLV, within authorized parameters, including trajectories, transporting specified classes of payloads to any reentry site designated in the license. A reentry operator license is valid for a 2-yearrenewable term.

§ 435.5 Policy and safety approvals.

To obtain a reentry license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part. Only a reentry license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 435.7 Payload reentry determination.

(a) A payload reentry determination is required to transport a payload to Earth on a reentry vehicle unless the proposed payload is exempt from payload review.

(b) A payload reentry determination made under a previous license application under this subchapter may satisfy the requirements of paragraph (a) of this section.

(c) The FAA conducts a review, as described in subpart D of this part, to make a payload reentry determination. Either a reentry license applicant or a payload owner or operator may request a review of the proposed payload using the application procedures contained in part 413 of thissubchapter. Upon receipt of an application, the FAA may conduct a payload reentry review independently of a reentry license application.

§ 435.9 Issuance of a reentry license.

(a) The FAA issues a reentry license to an applicant who has obtained all approvals and determinations required under this chapter for a reentry license.

(b) A reentry license authorizes a licensee to reenter a reentry vehicle and payload, if any, in accordance with the representations contained in the reentry licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the reentry license, including financial responsibilityrequirements.

§ 435.11 Additional license terms and conditions.

The FAA may amend a reentry license at any time by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicableregulations.

§ 435.13 Transfer of a reentry license.

(a) Only the FAA may transfer a reentry license.

(b) An applicant for transfer of a reentry license shall submit a reentry license application in accordance with part 413 of this subchapter and satisfy the applicable requirements of this part. The FAA will transfer a reentry license to an applicant who has obtained all of the approvals and determinations required under this chapter for a reentry license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate any findings made part of the record to support the initial licensing determination. The FAA may modify a reentry license to reflect any changes necessary as a result of a reentry license transfer.

§ 435.15 Rights not conferred by reentry license.

Issuance of a reentry license does not relieve a licensee of its obligation to comply with requirements of law that may apply to its activities.

§§ 435.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

§ 435.21 General.

The FAA issues a policy approval to a reentry license applicant upon completion of a favorable policy review. A policy approval is part of the licensing record on which the licensing determination is based.

§ 435.23 Policy review requirements and procedures.

Unless otherwise indicated in this subpart, regulations applicable to policy review and approval of the reentry of an RLV contained in part 431, subpart B of this subchapter shall apply to the policy review conducted for a license to reenter a reentry vehicle under this part.

§§ 435.24–435.30 [Reserved]

Subpart C—Safety Review and Approval for Reentry of a Reentry Vehicle

§ 435.31 General.

The FAA conducts a safety review to determine whether an applicant is capable of reentering a reentry vehicle and payload, if any, to a designated reentry site without jeopardizing public health and safety and the safety of property. A safety approval is part of the licensing record on which the licensing determination is based.

§ 435.33 Safety review requirements and procedures.

Unless otherwise stated in this subpart, regulations applicable to safety review and approval of the reentry of an RLV contained in part 431, subpart C of this subchapter shall apply to the safety review conducted for a license to reenter a reentry vehicle under this part.

§ 435.35 Acceptable reentry risk for reentry of a reentry vehicle.

To obtain safety approval for reentry, an applicant must demonstrate that risk for the proposed reentry, when assessed in combination with launch of the reentry vehicle, does not exceed acceptable risk for the conduct of an RLV mission as defined in paragraphs (a) and (b) of § 431.35 of this subchapter.

§§ 435.36–435.40 [Reserved]

Subpart D—Payload Reentry Review and Determination

§ 435.41 General.

The FAA conducts a payload reentry review to examine the policy and safety issues related to the proposed reentry of a payload, except a U.S. Government payload, to determine whether the FAA will approve the reentry of the payload.

§ 435.43 Payload reentry review requirements and procedures.

Unless otherwise indicated in this subpart, regulations contained in part 431, subpart D of this subchapter applicable to a payload reentry review and determination for reentering a payload using an RLV shall apply to the payload reentry review conducted for a license to reenter a reentry vehicle under this part.

§§ 435.44–435.50 [Reserved]

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

§ 435.51 General.

Unless otherwise indicated in this subpart, post-licensing requirements contained in part 431 subpart E, of this subchapter applicable to a license to reenter an RLV shall apply to a license issued under this part.

§§ 435.52–435.60 [Reserved]

Subpart F—Environmental Review

§ 435.61 General.

Unless otherwise indicated in this subpart, environmental review requirements contained in part 431 subpart F, applicable to a license to reenter an RLV shall apply to an application for a reentry license under this part.

§§ 435.62–435.70 [Reserved]

Issued in Washington, DC on August 28, 2000.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 00–22564 Filed 9–18–00; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 450

Financial Responsibility Requirements for Licensed Reentry Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 450

[Docket No. FAA 1999–6265; Amendment No. 450–1]

RIN 2120–AG76

Financial Responsibility Requirements for Licensed Reentry Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: Under its licensing authority, the Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration (FAA) determines financial responsibility requirements for licensees authorized to launch and reenter a reusable launch vehicle or to reenter a reentry vehicle. The FAA will determine, on an individual basis, the amount of required insurance or other form of financial responsibility after examining the risks associated with a particular reentry vehicle, its operational capabilities and designated reentry site. In this rulemaking, the FAA provides procedures for demonstrating compliance with requirements for reentry financial responsibility and for implementing risk allocation provisions of 49 U.S.C. Subtitle IX, chapter 701.

DATES: Effective November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation (202) 366–9320.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm. or the **Federal Register** web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us *9–AWA–SBREF@faa.gov.*

Background

The Commercial Space Act of 1998 (CSA), Public Law 105–303, extends to the Secretary of Transportation licensing authority over reentry operations and the operation of reentry sites, within the United States or when conducted by U.S. citizens abroad. The Secretary is authorized to license reentry activities consistent with public health and safety and the safety of property, as well as U.S. national security and foreign policy interests. Prior to enactment of the CSA, the Secretary's licensing authority under 49 U.S.C. Subtitle IX, chapter 701, popularly known as the Commercial Space Launch Act or CSLA, was limited to the launch of a launch vehicle and non-federal operation of a launch site. By delegation of authority, the Secretary's statutory responsibility for regulation and oversight of commercial space transportation is assigned to the Administrator of the Federal Aviation Administration (FAA), who in turn has delegated those functions to the Associate Administrator for Commercial Space Transportation (AST).

The additional grant of authority over reentry operations enables the FAA to fashion and implement a licensing and safety regulatory program for emerging reusable launch vehicle (RLV) technologies, facilitating their further development. Because the absence of an established licensing program could impede prospective RLV operation, the FAA has worked closely with industry and the interested public in crafting regulations that form the foundation of the safety program applicable to RLVs. The FAA's regulatory program is designed to be stable, but not static, in order to respond to advancements in technology and vehicle performance capabilities.

The authority granted by the CSA over reentry and reentry site licensing generally operates in a manner parallel to that granted to the agency over launch and launch site operations. Accordingly, it is necessary to establish, in regulations, a financial responsibility and risk allocation program applicable to licensed reentry activities, as was done in 1998 for licensed launch activities. (*See* 14 CFR part 440, referred to in this final rule as part 440). Although no formal request has been made for an RLV mission or reentry license, prospective operators and their customers and contractors will benefit from understanding, in advance of operation, how certain risks will be allocated by regulation and covered by insurance or otherwise addressed through statutorily-directed financial responsibility.

This final rule implements a financial responsibility program applicable to reentry operations of an RLV or other reentry vehicle, similar in nature to that contained in part 440. A companion rulemaking, referred to in this rule as the Final RLV and Reentry Licensing Regulations, covers licensing requirements for RLV missions and other reentries within the FAA's regulatory authority. Taken together, issuance by the agency of the comprehensive safety and risk management regulations just described removes potential regulatory barriers and impediments to RLV technology development and operation.

Enactment of the CSA in 1998 extends to a licensed reentry, including reentry of an RLV, the financial responsibility and risk allocation scheme that has proven critical to the success of the U.S. commercial space industry. Most significantly, it affirms the government's commitment to share with industry in the potentially catastrophic risks associated with launch and reentry of an RLV, thereby enabling liability risk of all participants to be maintained at a manageable level. Absent further amendment of the CSLA, however, that commitment may be short-lived. A critical component of the statutory risk sharing scheme, known as ''indemnification,'' will sunset at the end of the year 2000 for both launch and reentry.[1] Unless extended, catastrophic

[1] A one year extension of the sunset provision from December 31, 1999 to December 31, 2000, was enacted by Section 433 of H.R. 2684, the

risk protection will only be available to those launch and reentry vehicle operators that have submitted a substantially complete application for a license by December 31, 2000.

The indemnification provisions of the CSLA are one facet of a comprehensive financial responsibility and risk allocation program added to the CSLA in 1988 in response to, among other things, industry concern over potentially unlimited liability that may result from launch vehicle failure. As expressed in testimony delivered at a hearing before the House Subcommittee on Space and Aeronautics on April 21, 1999, the commercial space industry continues to require relief from open-ended liability, particularly in light of government-backed support afforded to international competitors of U.S. entities. Hearings Before the Subcommittee on Space and Aeronautics of the Committee on Science, 106th Cong., 1st Sess., Serial No. 106–13. RLV operators share similar concerns over the prospect of potentially unlimited liability that may result from a catastrophic event associated with reentry and are expected to benefit from the statutory program in a manner comparable to that realized by the commercial launch industry in launching expendable launch vehicles (ELVs).

CSLA Financial Responsibility and Risk Allocation

Financial responsibility and risk allocation for launch and reentry under the CSLA consists of several components, including a three-tiered approach to addressing claims for damage or loss suffered by third parties as a result of licensed activity, requirements for financial coverage for damage or loss to government property involved in the licensed activity, and contractual assumption among participants in the activity of certain risks that result from their participation.

Under the CSLA, a launch or reentry licensee is required to obtain two forms of insurance, in amounts determined by the FAA using a risk-based methodology known as maximum probable loss (MPL), up to statutorily specified ceilings. Insurance coverage (or other demonstration of financial responsibility) provided by the licensee would cover the first tier of liability risk, that is, the maximum probable loss due to third-party claims that result from licensed activity. Insurance obtained by the licensee in accordance with CSLA requirements must cover third-party claims against participants in that activity, thereby relieving each of them of the cost of separately insuring their liability risk. In addition to the licensee (vehicle operator), participants in a licensed launch or reentry that benefit from required insurance include the licensee's customer(s), and the contractors and subcontractors of the licensee and customer, as defined by the FAA in financial responsibility regulations, as well as the U.S. Government, its agencies and its contractors and subcontractors involved in the licensed activity. By statute, the FAA may not require more than $500 million of liability insurance for a licensed launch or reentry.

Insurance is also required in the event of damage or loss to U.S. Government range assets at a launch or reentry site as well as property belonging to government contractors supporting the licensed activity. Government property insurance requirements may not exceed $100 million for a licensed launch or reentry.

The CSLA provides a procedure whereby the U.S. Government agrees to be responsible for the payment of successful third-party claims against a participant in a licensed launch or reentry in the event liability exceeds risk-based insurance requirements set by the FAA. The payment of excess claims procedure, commonly referred to as indemnification, addresses the second tier of liability risk and is subject to congressional appropriation of funds. The government's responsibility for payment of claims under this procedure is limited to an additional $1.5 billion, as adjusted for post-January 1, 1989 inflation, above the required amount of insurance. Although it has never been invoked, the statutory indemnification procedure has been a crucial factor in enhancing the international competitiveness of the U.S. space industry and represents the government's agreement, albeit conditioned upon congressional action, to share in the risks that are associated with commercial launch and reentry operations. The third tier of risk, that is, liability for third-party claims in excess of required insurance plus the appropriated $1.5 billion, as adjusted for inflation, is the responsibility of the legally liable party. Consistent with part 440 and as explained in the notice of proposed rulemaking for licensed reentry activities (64 FR 54448–54472, October 6, 1999) (referred to in this final rule as the NPRM), the FAA, by this final rule, assigns financial responsibility for the third tier of risk to the licensee unless it has no liability whatsoever for the claims.

Both the commercial space industry and the U.S. Government benefit from the statutory risk sharing arrangement. Under the *quid pro quo* arrangement described above, the aerospace industry is relieved, in part, of the consequences of catastrophic liability which would be financially burdensome, if not impossible, to cover through private insurance. And, the government benefits by having its liability risk covered at no cost to the government, thereby insulating it financially, up to the prescribed amount. The government's liability exposure arises by virtue of its involvement in licensed activities through use of its property, personnel, facilities, equipment and services to support operations, and as a result of treaty obligations under which the government accepts absolute liability for damage on the ground or to aircraft in flight, outside of the United States, when the United States is deemed a launching State under the terms of the Outer Space Treaties, specifically the Convention on International Liability Caused by Space Objects (Liability Convention, entered into force September 1972). Liability for damage caused elsewhere, such as on orbit damage, is also accepted by the government as a launching State under the Liability Convention but only if the damage is the fault of persons for whom the launching State is responsible. Under Article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty, entered into force October 1967), the United States bears international responsibility for national activities in outer space, including those carried on by non-governmental entities.

Under the Liability Convention, the definition of a launching State includes a State from whose territory or facility a space object is launched. Liability Convention, Article I(c)(ii). A ''space object'' includes component parts of a space object as well as its launch vehicle and parts thereof. Liability Convention, Article I(d). The latter definition appears sufficiently broad as to encompass within its terms a reusable launch vehicle or one of its stages. With the introduction of commercial reentry technology and capability, the prospect of government liability arising out of the errant performance of an RLV makes the benefits of statutory financial responsibility and allocation of risk all the more significant and valuable for the government.

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000.

Risk allocation under the CSLA includes means, in addition to insurance and the statutory indemnification procedure described above, of assigning and covering certain risks to launch and reentry participants and the government.

Under the CSLA, reciprocal waivers of claims are required among launch participants and reentry participants, respectively, in order to relieve each of them of the threat and cost of inter-party litigation, and the associated need to obtain liability insurance covering their potential liability to other participants in a launch or reentry, for property damage or loss for which each might otherwise be legally responsible. As in a licensed launch, the CSLA directs a reentry licensee, its customer and the contractors and subcontractors of each, involved in the licensed activity, to enter into reciprocal agreements whereby each participant waives certain claims it may have for damage or loss against each of the other participants and accepts financial responsibility for losses suffered by its personnel. (Consistent with the FAA's approach in establishing final rules under part 440 for launch financial responsibility, these entities are referred to in this rulemaking as private party reentry participants, or PPRPs. Entities involved in licensed launch activities other than the government and its contractors and subcontractors are referred to in this supplementary information as private party launch participants, or PPLPs.) As explained in the supplementary information accompanying issuance of part 440, an entity's agreement to be responsible for losses suffered by its employees may be termed a legislatively-mandated contractual indemnification obligation under which each party agrees to hold harmless and indemnify other participants in the licensed activity against whom one's employee has made a claim. Under FAA financial responsibility regulations, potential claims of employees of PPLPs and PPRPs are not intended to be addressed by, or considered by the FAA in determining the required amount of, liability insurance that a licensee must obtain to satisfy the CLSA. The principles explained in the part 440 rulemaking regarding the reciprocal waiver of claims agreement required for a licensed launch apply, in equivalent fashion, to licensed reentry. (*See* 63 FR 45592, August 26, 1998).

The CSLA further directs the government to waive claims for itself and for its contractors and subcontractors involved in a licensed launch or reentry and assume certain financial responsibility. However, the government's waiver of claims for property damage is limited to claims in excess of insurance required to cover government property and property belonging to government contractors and subcontractors involved in supporting the licensed activity, at a Federal range. (The government and its contractors and subcontractors involved in licensed activity are referred to in this document as government launch or reentry participants, GLPs or GRPs, as the case may be.) As explained in supplementary information accompanying issuance of part 440 final rules at 63 FR 45601–06, because of limitations on the government's ability to assume an unfunded contingent liability, the government does not accept financial responsibility for covering losses sustained by employees of the government or its contractors and subcontractors, referred to in the final rule as ''Government personnel,'' except to the extent claims for Government personnel losses exceed required insurance. Rather, claims of Government personnel are intended to be covered under the licensee's liability insurance policy as third party claims and are considered by the FAA in establishing liability insurance requirements for the licensed activity.

A more detailed explanation of risk allocation principles and how they are implemented through FAA regulations appears in the supplementary information accompanying issuance of part 440, a copy of which may be accessed from the AST web site at *http://ast.faa.gov.*

This final rule focuses on those aspects of financial responsibility and allocation of risk that are unique to reentry activities authorized by the FAA. Reentry vehicles requiring a license to return to Earth include, but are not limited, to RLVs. Without exception, however, each of the reentry concepts described to the FAA in pre-application consultation involves wholly or partially reusable launch vehicles. For most of these vehicle concepts, authorized flight would consist of launch and reentry of an RLV. Part 440 requirements apply to licensed launch of an RLV; however, because reentry licensing authority did not reside within the FAA at the time part 440 was issued, risk management issues unique to an RLV mission, as opposed to an ELV launch, were not specifically addressed in the part 440 rulemaking. Accordingly, also highlighted in the discussion below is the FAA's approach to financial responsibility and allocation of risk for authorized flight of an RLV.

Between launch and reentry of an RLV, activities may be conducted on orbit that do not require FAA licensing and would not be subject to the CSLA financial responsibility and risk allocation regime. In this rulemaking, the FAA clarifies the scope of authorized RLV launch activities subject to part 440 requirements and authorized RLV reentry activities subject to this final rule. Doing so will enable licensees and participants in RLV missions to make informed business decisions governing risk and liability for unlicensed activity that is not intended to be covered by the CSLA financial responsibility and risk allocation regime.

In issuing this final rule, the FAA intends to ensure that the universe of participants in licensed RLV activity and reentry activity generally are identified, and that claims against them from all potential sources are addressed by FAA rules governing financial responsibility for licensed vehicle flight.

Claims for injury, damage or loss may come from entities and individuals involved in licensed activity and from those that are not involved in licensed activity. Financial responsibility for claims of participants involved in licensed RLV flight and their employees would be addressed through the comprehensive reciprocal waiver of claims agreement presented in Appendix B of this final rule. For an RLV mission that is suborbital in nature in that the vehicle does not enter a closed orbital path but rather returns to Earth through ballistic flight or other physical forces, the same entities would necessarily be involved in all licensed flight. However, reentry of an RLV from Earth orbit may involve participants that are different, in part, from those involved in its launch. Even so, entities and their employees involved in either flight phase are deemed by the FAA to be sufficiently involved in a licensed RLV mission as to warrant their participation in and the protections afforded by a reciprocal waiver of claims agreement covering all licensed mission flight of an RLV. Participants in a licensed reentry may suffer property damage or loss and their employees may suffer losses through their involvement in the licensed launch required to place the vehicle or payload in Earth orbit. Including all participants in licensed flight is therefore necessary to accomplish the intended objective of the reciprocal waiver scheme of limiting the risk of inter-party litigation. Accordingly, although this rulemaking is directed at reentry financial responsibility, the NPRM (64 FR 54448, Oct. 6, 1999) proposed, and this final rule codifies, a comprehensive from of reciprocal waiver of claims agreement

that would include all participants, government and private, involved in licensed RLV flight, including launch and reentry of an RLV, in order to address the vast proportion of proposed reentries for the foreseeable future. The FAA will address on an individual basis those circumstances in which licensed reentry occurs sufficiently independent of the launch that placed the reentry vehicle in space making it practical and reasonable to separate launch participants from reentry participants for purposes of implementing the reciprocal waiver agreement.

Claims resulting from licensed activity of entities and individuals who are not Government personnel under FAA financial responsibility regulations and that are not involved in licensed RLV activity would be addressed through liability insurance obtained by the license to respond to covered claims by a third party, as defined in part 440 and this final rule, against any participant, public or private, involved in licensed activity. Because a participant in either flight phase is sufficiently involved in vehicle operations such that it may be a potential defendant in litigation arising out of loss or damage to third parties, liability insurance required as a condition of a reentry license (and an RLV mission license authorizing launch and reentry of an RLV) must cover participants involved in associated launch activities. Simarily, launch liability insurance under part 440 would cover entities involved in associated reentry activities, either as a customer or contractor or subcontractor of the licensee. Claims arising out of launch or reentry of an RLV, or flight of a suborbital RLV, in excess of the required amount of liability insurance become the responsibility of the government, subject to appropriation of funds, up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989) above the amount of insurance that the agency requires. Addressed as part of this supplementary information is the FAA's approach to establishing liability and property insurance requirements for licensed reentry, as distinct from licensed launch, of an RLV that does not operate as a kind of suborbital rocket, and eligibility for indemnification as a result of catastrophic claims arising out of RLV launch and reentry.

Notice of Proposed Rulemaking

Proposed rules governing reentry financial responsibility and risk allocation appear in a notice of proposed rulemaking or NPRM, published in the **Federal Register** on October 6, 1999. *See* 64 FR 54448–54472. The 60-day comment period initially provided was reopened for an additional 30 days at the request of several launch providers.

The NPRM was intended as a companion document to another notice of proposed rulemaking, referred to in this supplementary information as Proposed RLV and Reentry Licensing Regulations, issued April 21, 1999, describing the FAA's technical approach to licensing an RLV mission and other reentries. 64 FR 19626–19666. The Proposed RLV and Reentry Licensing Regulations describe the scope of activities comprehended by FAA launch and reentry licensing authority, respectively, in order to ensure those operations do not jeopardize public health and safety or the safety of property. However, more detailed discussion and consideration of the appropriate commencement and termination point for RLV launch and reentry authorizations, particularly from a risk management perspective, was deferred to the October 6, 1999 NPRM (64 FR 54448).

The reentry financial responsibility regulations proposed in the NPRM resemble closely those applicable to licensed launch activities under part 440 and would effect risk allocation among participants in a licensed reentry in a manner comparable to that currently utilized for commercial launches. Instead of reciting the FAA's approach to implementing the various principles underlying CSLA-based requirements for financial responsibility and risk allocation, the NPRM referred the interested public to the part 440 rulemaking, and stated that the principles governing relationships among launch participants and coverage for third party claims for damage or loss under part 440 would apply to reentry as they currently do for launch.[2] Documents associated with the part 440 rulemaking can be accessed from the AST web site at http://ast.faa.gov.

Except for a request for clarification of the relationship between a licensed launch site, commonly known as a spaceport, and its customer when its customer is a licensed launch or reentry vehicle operator, the FAA received no comments on financial responsibility and risk allocation principles established through the part 440 rulemaking and incorporated in this rulemaking. The majority of comments focused on the scope of licensed activity comprehended by FAA launch and reentry licensing authority when the launch vehicle is reusable. The FAA responds to comments regarding the scope of its licensing authority in this final rule; however, regulatory definitions of the terms ''launch'' and ''reentry,'' as applied to an RLV, appear in the Final RLV and Reentry Licensing Regulations.

Scope of RLV Launch and Reentry Licensing Authority and Associated Financial Responsibility

Proposed Definitions of ''Launch'' and ''Reentry'' of an RLV

By law, the transportation events of launch of an RLV and its reentry require licensing by the FAA; however, the two authorizations may be combined in a single license document consistent with the FAA's longstanding practice of authorizing multiple flights or launch missions in a single license.

In the Final RLV and Reentry Licensing Regulations, the FAA establishes a mission approach to RLV licensing through use of a single collective risk criterion that may not be exceeded for proposed RLV flight, comprised of launch and reentry flight, to be authorized by an FAA license. The risk criterion selected is consistent with that applied to ELV launches at Air Force ranges. The agency's objective in utilizing a single collective risk threshold against which to measure public risk is to ensure that round-trip flight for the purpose of achieving Earth orbit or outer space and returning a vehicle to Earth does not pose greater jeopardy to public health and safety than would launch of an ELV, the more conventional means of accessing space.

Notwithstanding use of a mission-based approach to assessing public safety risk, the FAA concludes that its licensing authority over RLV flight does not encompass on orbit operation of an RLV that is unrelated to its launch or reentry.

Although the FAA does not license on orbit operation of an RLV, the authority granted to an RLV operator to reenter its vehicle may be conditioned upon satisfaction of certain criteria before a reentry may be commenced under an FAA license. In this manner, FAA

[2] For a more detailed explanation and analysis of the FAA's approach to implementing financial responsibility and risk allocation requirements of the CSLA, the interested public is referred to part 440 and the accompanying supplementary information found at 63 FR 45592–45625. It identifies the universe of third parties whose claims are intended to be addressed or covered through statutorily required insurance or other form of financial responsibility. The notice of proposed rulemaking associated with the part 440 rulemaking, issued July 25, 1996, describes the FAA's methodology for setting insurance requirements on the basis of its determination of the maximum probable loss from covered third party claims and for government property damage resulting from licensed activity. (*See* 61 FR 39004–39007.)

licensing authority may affect or limit on orbit operations, without subjecting them to licensing requirements of the FAA. For example, a reentry license or authorization may be conditioned upon verification of a vehicle operating limits while on orbit, assuming those limits were identified in an application and determined by the FAA as adequate to preserve intact, or at least not degrade, the integrity of vehicle safety systems necessary for safe reentry. If vehicle operations while on orbit exceed those limits there may be no assurance, absent additional data from the operator, that vehicle reentry can be accomplished in a manner consistent with the application and supporting analyses. Hence, reentry authorization may be withdrawn or contingency plans invoked to address the non-conforming vehicle. To this extent, FAA licensing procedures and approvals may influence planned on orbit operations involved in an RLV mission, including those that do not require FAA licensing because they are neither launch nor reentry.

Liability risk that may be associated with activities *not* subject to FAA licensing must be addressed through private insurance and relationships among participants in the activity are not directed by CSLA risk allocation requires, such as reciprocal waivers of claims. Hence, from a financial responsibility and risk management perspective, absence of FAA licensing authority over on orbit operations unrelated to RLV launch or reentry may influence business decisions and mission design.

The FAA understands the importance to launch and reentry vehicle operators of ensuring comprehensive coverage of liability risk for all vehicle operations and the need for certainty and predictability in understanding when the CSLA applies and when it does not. For this reason, the NPRM presented detailed analysis and rationale concerning the scope of licensed launch and reentry activities associated with an RLV mission to which CSLA-based financial responsibility and risk allocation requirements would apply in a certain and predictable fashion. Financial responsibility requirements imposed by the FAA are co-extensive with activities authorized by a license. Certain consequences of licensed activity are also addressed through CSLA-based allocation of risk, particularly government indemnification. However, a sufficient causal relationship must be demonstrated between licensed activity and third party claims in order for such claims to be considered as ''resulting from'' licensed activity and to be eligible for consideration under the indemnification provisions of the CSLA. 49 U.S.C. 70113(a). Not every event following a launch bears a sufficient causal nexus to that launch to qualify for indemnification. Nor would every event causing damage to third parties on orbit or on the ground bear a sufficient nexus to a licensed reentry as to be deemed to result from licensed activity. Based upon guidance issued by the House Committee on Science and discussed further in the section-by-section analysis of the final rule, the FAA cannot agree with those commenters that suggested that anything that happens once a reusable launch vehicle has been launched necessarily and sufficiently results from the licensed activity of ''launch'' and would therefore be eligible for indemnification. Absent a sufficient relationship to licensed activity, launch and reentry vehicle operators must be prepared to address third party liability entirely through private insurance or other form of financial responsibility. Consistent with the part 440 rulemaking, the FAA considers that determining eligibility for payment of excess third party claims is a fact-based inquiry that depends upon unique circumstances giving rise to a claim. Accordingly, the FAA declines to issue rules of general applicability to determine eligibility requirements.

The NPRM explained that financial responsibility requirements applicable to licensed launch of an RLV are provided under part 440 and that losses resulting from performance of the launch vehicle during its ascent are intended to be addressed through risk-based insurance and eligible for government indemnification under the CSLA. Unlike an ELV, however, the end of RLV launch authorization ought not be defined by the last action of control over the launch vehicle exercised by the licensee after payload separation, according to the NPRM, because an operator could retain control over the vehicle throughout its orbital life in order to accomplish a reentry. If a control test were applied, all events, including on-orbit operations and reentry, would be comprehended by the term ''launch,'' and this is an illogical result in the FAA's view.

The FAA proposed in the NPRM to define the end of an RLV launch for purposes of its licensing authority by using an event test dictated by the purpose of the mission. The supplementary information accompanying the NPRM indicated that accomplishment of the launch phase of the mission would provide an appropriate point of demarcation between the end of licensed launch activities and non-launch-related events, when the launch vehicle is an RLV. At the time the NPRM was issued, market analysis indicated launch and replenishment of low Earth orbit (LEO) satellite constellations would be a primary factor behind RLV development and launch demand, leading the FAA to identify payload deployment or attempted deployment, as a typical RLV mission endpoint for purposes of licensing an RLV launch. For pre-flight operations, the FAA identified no basis, from a public safety perspective, for defining the commencement of licensed ''launch'' of an RLV differently from that of an ELV launch. FAA licensing authority over pre-flight operations at a launch site in the United States is directed by the CSLA and, under 14 CFR 401.5, begins upon arrival of the launch vehicle (or its major components) at a U.S. launch site for purposes of fulfilling the FAA's safety mandate.

Public safety considerations underlie the FAA's proposal to license reentry of a reentry vehicle commencing upon initiation of reentry readiness procedures, as reflected in the Proposal RLV and Reentry Licensing Regulations. (*See* 64 FR 19626–19666, issued April 21, 1999.) Under that proposal, ''reentry'' would include ''activities conducted in Earth orbit or outer space to determine reentry readiness and [that] are therefore unique to reentry and critical to ensuring public health and safety and the safety of property during reentry.'' (64 FR at 19656). For most RLVs under consideration, that is, those that will deploy a payload as their mission objective, the FAA considered that operators would endeavor to spend minimal time on orbit in order to minimize cost and risk to their vehicle. Accordingly, for those operators, the FAA suggested that reentry readiness activities would begin immediately following payload deployment. Hence, there would be no (or extremely minimal) activity between launch and reentry that would not be covered by an FAA license for an RLV whose mission purpose is dedicated to payload deployment and prompt return to Earth. The FAA reiterates that at the time the Proposed RLV and Reentry Licensing Regulations and the NPRM were issued, satellite constellation deployment and servicing were identified as the primary forces driving demand for RLV launch services.

Under the NPRM, reentry readiness activities performed on orbit would be those requiring regulatory oversight in order to accomplish the agency's public

safety objectives. Safety-related procedures intended to prepare the vehicle for its reentry would consist of, among other things, those operations necessary to assure proper attitude and orientation of the vehicle and operability of safety-related systems (both software and hardware). Reentry readiness procedures and check-outs may begin days, perhaps weeks in some unique instances, in advance of the vehicle's actual descent to Earth. As part of its license application, a prospective licensee would identify those reentry readiness procedures and operations it intended to rely upon for safe reentry and that would become part of the licensing record. Under this approach, the FAA would apply reentry readiness and public safety criteria to make an individualized determination, on the basis of a particular reentry proposal, as to commencement of licensed reentry. The license would identify clearly the point at which a licensed reentry commences.

In support of its proposal to license public safety-related reentry readiness procedures and preparatory activities, but to exclude from license coverage events in space wholly unrelated to launch or reentry, such as maneuvers between orbits, the FAA cited report language issued by the House Committee on Science (the Committee) accompanying H.R. 1702, the bill ultimately enacted as the CSA. H. Rep. 105–347, 105th Cong., 1st Sess. (Committee Report). Specifically, the Committee indicated that ''reentry'' is ''intended to cover a wide range of activities, including the act of returning a reusable launch vehicle to Earth. In establishing the legal framework for reentry, the Committee's approach is to treat reentry of a reentry vehicle the same as launch of a launch vehicle.'' H. Rep. 105–347, 105th Cong., 1st Sess., at 21. The FAA finds in this non-binding guidance Committee intent that the FAA address public safety considerations surrounding reentry activities in a manner comparable to that utilized for launch regulation. Therefore, despite the Committee's suggestion that it would expect reentry to begin, typically, when vehicle attitude is oriented for propulsion firing to place the vehicle on its reentry trajectory, the FAA concludes that its public safety mandate compels application of a regulatory program sufficient to address public safety considerations that arise as a result of planned reentry of a reentry vehicle, including an RLV. As in launch licensing, certain pre-flight events, that is, those preceding descent of a reentry vehicle, may be regarded as so hazardous to public safety or property, or to have such direct impacts on reentry risk and public safety, as to warrant regulatory oversight through FAA licensing, as explained in the NPRM. (*See* 64 FR at 54453.)

Under the FAA's safety mandate, a vehicle operating on orbit in a steady state condition such that there is no change in its condition or position ought not require regulatory oversight by the FAA. Risks to public safety change upon initiation of reentry readiness procedures or operations that, by virtue of their performance, may affect the condition or stability of the vehicle making reentry unsafe. Exercise of reentry licensing authority so as to cover such procedures or operations should facilitate accomplishment of the agency's public safety objectives by ensuring that the risk of a non-nominal reentry resulting from the conduct of those activities is addressed as part of FAA licensing to ensure such risks are sufficiently mitigated. Similarly, the FAA ensures that CSLA-directed financial responsibility and risk allocation covers such risks. The FAA would consider non-nominal reentry scenarios as part of its reentry licensing and regulatory program and may rely upon contingency planning by a licensee, such as plans for reentry to an alternative or contingency abort location, before issuing a license. Reasonably foreseeable risks of non-nominal operation would likewise be addressed by the FAA as part of its risk-based approach to determining insurance requirements.

Whether an RLV mission involves seamless licensing, as in the case of an RLV launch for purposes of payload deployment and immediate return to Earth, or licensed launch and reentry with intervening unlicensed activity, both authorizations (launch and reentry) may be combined in a single license document. As reflected in the NPRM, the FAA proposed that all licensed vehicle flight must be covered by a licensee's demonstration of financial responsibility and subject to risk allocation under the CSLA. Because flight risks are different for launch and reentry, and either or both events may pose potentially catastrophic risk, financial responsibility up to required amounts must be available throughout licensed flight. In the NPRM, the FAA proposed to reserve discretion, depending upon the results of its risk analysis, to require either a consistent measure of financial responsibility applicable to all licensed flight, or different amounts covering launch and reentry consequences. In either case, financial responsibility would be required to respond to claims arising during *either or both* licensed flight phases. Except for certain suborbitally operated RLVs, imposition by the FAA of a uniform or single insurance requirement throughout licensed flight would not relieve the licensee of financial responsibility for third-party claims up to the established ceiling during *each* licensed flight phase. For a suborbital RLV that enters outer space, the FAA suggested that it could apply separate financial responsibility requirements for launch and reentry, but would reserve discretion to impose a uniform requirement throughout licensed flight. The NPRM solicited public comment on the proposed distinction between suborbital RLVs that technically satisfy the definition of a reentry vehicle and those that do not and must necessarily be licensed under the agency's statutory authority for launch of a suborbital rocket.

Overview of Comments on Proposed Scope of RLV Mission Licensing

The agency received comments from ten entities representing a cross-section of the affected industry. Among the commenters were seven developers of reusable launch vehicle technology and one prospective launch site, or spaceport, targeting the RLV market. Three of those entities, The Boeing Company, Lockheed Martin Corporation, and Orbital Sciences Corporation, are currently licensed to launch ELVs and as a condition of their licenses must comply with part 440 requirements. In addition, comments were submitted by a U.S. insurance broker, Marsh Inc. (Marsh), and on behalf of the International Underwriting Association of London. Nearly all of the comments addressed the issue of FAA licensing authority over on orbit operation of an RLV but expressed divergent views. For example, Vela Technology Development, Inc. (Vela) and Space Access urged seamless regulation of all RLV flight while others, including Kistler Aerospace Corporation (Kistler), supported a narrow view of FAA licensing authority and regulatory oversight. The Boeing Company (Boeing), Lockheed Martin Corporation (Lockheed Martin) and Marsh noted with interest the gap in FAA licensing authority over RLV operations, as identified in the NPRM. Lockheed Martin observed that it is premature to judge whether the FAA's current licensing authority is adequate from a risk management and business perspective while Boeing objected to issuance of final regulations that would leave a gap in licensing coverage and associated indemnification benefits for

on orbit activities of RLVs, notwithstanding limitations on FAA authority under the CSLA.

A number of comments stressed that regulations affecting RLV operations should enhance, not inhibit, the international competitiveness of the U.S. space industry. However, some commenters believe competitiveness is aided by licensing of, and application of CSLA financial responsibility and risk allocation to, all RLV activities including those on orbit not specifically related to ascent or descent flight of a vehicle. Others urged less regulation through narrow application of FAA licensing authority over launch and reentry to aid competitiveness. Kistler, in particular, stressed that if made final, the regulations as proposed would make the United States the only nation to regulate activities in space and to require insurance of launch operators for on orbit activities. Doing so would be contrary to promoting the competitiveness of the U.S. launch industry, according to Kistler. The FAA notes that Kistler is not entirely correct in its broad statement inasmuch as the United Kingdom may require insurance of satellite owners and operators who are British nationals under its Outer Space Act 1986. Also, to some extent, commercial launch operators currently licensed to launch ELVs are required to maintain insurance for vehicle operations on orbit where they are part of a licensed launch, for example, maneuvers and operations necessary for payload delivery or to render an orbital stage inert.

To further enhance competitiveness of the emerging RLV industry, some comments endorsed treating RLVs in a manner, comparable to ELVs. By way of contrast, Vela was critical of the FAA for applying an ELV-based regulatory philosophy to RLV flight instead of applying a new paradigm to RLV missions.

Summary of Comments on Proposed Scope of RLV Mission Licensing

The NPRM solicited public comment on the FAA's proposed approach to licensing RLV flight to and from orbit from the perspective of ensuring meaningful application of the statutory financial responsibility and allocation of risk regime. Most of the comments addressed the relative merits of licensing all aspects of RLV operation, that is, to, from and on orbit, and implications for insurance and risk coverage. A number of comments focused upon and took issue with proposed definitions of ''launch'' or ascent flight of an RLV and ''reentry'' or descent flight of an RLV, as defined by the FAA in proposed regulations, and suggested alternative views regarding the appropriate breadth of launch and reentry activities that would require authorization by an FAA license and are therefore subject to CSLA financial responsibility requirements.

The following summary of the comments addressing the FAA's authority for launch and reentry licensing authority express divergent views with respect to on orbit operations in terms of whether they are licensable as part of launch or reentry as those terms are defined by the CSLA and implemented by the FAA in regulations governing RLV operations. For the most part, comments on the NPRM expressed sensitivity to the limits of FAA licensing authority under existing law, whether or not the commenter found the regulatory result sufficient or satisfactory from a business and operational perspective. Responses to the comments follow under the heading, ''Response to comments on proposed scope of RLV mission licensing.''

Space Access, Boeing and Vela urged that all vehicle operations involving an RLV should be subject to a seamless regulatory program and associated financial responsibility and risk allocation regime. In support of its position, Space Access suggested that all on orbit operation of a vehicle that ultimately is intended to reenter to Earth may affect reentry safety and reliability and therefore should be subject to FAA oversight and licensing. According to Space Access, planned reentry provides the following litmus test of what should and should not be subject to FAA regulation: If a vehicle is intended to be recovered for reuse its operations should be covered by an FAA license. If it is not so intended then it would not be subject to FAA regulatory oversight. Hence, the only on orbit operations that would not be subject to FAA authority would be those involving vehicles never intended for recovery and reuse, according to Space Access. Space Access recommended use of a control test in defining the breadth of licensed activities such that all vehicle operations, wherever conducted, would be licensed through the point (after payload separation if that is the mission) when the last action occurs over which a licensee has direct or indirect control over the launch vehicle. Space Access's proposed definition of launch would include reentry of an RLV, at least through landing at a reentry site. Consistent with seamless licensing, Space Access endorses a seamless approach to financial responsibility covering all aspects of RLV operation. A single, seamless financial responsibility requirement covering the entire RLV mission, including on orbit operations, would have the added benefit of reducing compliance burdens for licensees and minimizing possible overlaps between launch and reentry insurance coverage.

Boeing also endorsed application of a control test in defining the scope of RLV activities requiring FAA licensing and compliance with statutory financial responsibility and risk allocation requirements. While understanding legislative limits on FAA regulatory authority, Boeing nevertheless questioned, if not objected to, a licensing regime which fails to address the full mission range of RLVs, does not account for causal connections between on orbit activities and non-nominal reentry, and overlooks the ''relevance and applicability of FAA commercial aircraft 'flightworthienss' standards to RLV's.'' Boeing proposed an alternative definition of the term ''payload,'' as explained in clarifying remarks, as a means of suggesting that a launch is not concluded as far as the payload is concerned where the payload is not simply deposited in Earth orbit or outer space but performs on orbit operations so that vehicle operations would be subject to continued licensing and regulatory oversight by the FAA. Boeing also pointed to a perceived regulatory shortfall in terms of fulfilling international obligations of the United States under the terms of the Outer Space Treaties to supervise activities of non-governmental entities in outer space. Due to the ''critically low predictability'' of RLV risks and the inability to spread risk among a large fleet of vehicles, among other things, Boeing believes that licensing and indemnification coverage throughout an RLV mission, including on orbit operations, is critical for the RLV industry, particularly in the absence of specific flightworthiness standards similar in nature to airworthiness certification requirements for aircraft. From the perspective of financial responsibility, Boeing expressed concern that the FAA's proposed licensing approach and having separate insurance requirements fore each flight phase, would create the potential for uncertainty and inconsistency in claims adjudication as well as an unpredictable indemnification gap, or gray zone, for unlicensed on orbit activities. This is undesirable from Boeing's perspective as well as ''conceptually artificial in the context of RLV technology,'' despite potential eligibility for indemnification during each licensed flight phase.

Absent comprehensive licensing and seamless financial responsibility requirements for all aspects of an RLV mission, Boeing predicts the RLV industry will face increased insurance costs, litigation and customer anxiety. Boeing argued that these issues would be resolved under a control test that would subject all on orbit activity of an RLV and FAA licensing.

Vela plans a passenger-bearing RLV in furtherance of space tourism. Vela criticized the FAA's proposed approach to separating flight phases for licensing and financial responsibility and risk allocation purposes and attributes it to a failure to realize that RLVs are not ELVs that plan to reenter. According to Vela, RLVs are more like aircraft that take-off and land, whether planned or unplanned, because what goes up will come down and also in terms of their instantaneous impact point [3] (IIP) over populated areas. Vela urged the FAA to apply its authority in a manner that covers an RLV mission in its entirety because the risks intended to be addressed by FAA licensing regulations are those to people and property on the ground regardless of when landing or impact occurs, that is, regardless of whether landing occurs nominally as planned or non-nominally before initiation of intentional reentry. Vela argued that the need to find a causal nexus between incensed activity and damage that results on the ground is misleading inasmuch as a vehicle should be responsible for the consequences of its flight regardless of when something goes awry and ''the U.S. Government should indemnify the launch industry (RLVs included) against catastrophic loss liability on the ground; period.'' According to Vela, if the FAA authorizes the launch of a vehicle and something happens on orbit that causes a liability on the ground, it results from the authorized launch. Therefore, definitions of launch and reentry and the need to allocate risk between the two events are not meaningful to RLV operations, in Vela's opinion, just as the FAA does not distinguish between the scope of take-off and landing of aircraft. According to Vela, because resulting liability stems from the fact that an RLV launch was authorized, indemnification must be available as a safeguard against catastrophic liability for damage or casualties on the ground any time it results from RLV operation.

By way of contrast, comments submitted by Kistler and Lockheed Martin acknowledge that the FAA was not granted authority under the CSA to license on orbit operation of RLVs.

Kistler objected to the FAA's proposed definition of ''reentry'' as exceeding the scope of FAA legal authority and creating ambiguity. Kistler suggested that the proposed definition will result in inappropriate regulation of on orbit activity and, to the extent the FAA proposes to do so in order to extend indemnification benefits to RLV operators, it is not necessary because of the law risk of survivability and damage from a non-nominal or otherwise unplanned reentry. Moreover, Kistler does not believe that the CSLA directs indemnification for an inadvertent reentry.

Lockheed Martin's comments were submitted with its stated understanding that ''[n]either the CSA nor the CSLA extends the Office's licensing authority to on-orbit activities (*i.e.,* those activities that fall within neither the definition of ''launch'' nor the definition of ''reentry'').'' Therefore, according to Lockheed Martin, the questions that will require time and experience to answer are whether liability insurance will be available to cover unlicensed activities on orbit (*i.e.*, whether the risks are considered by the underwriting community as insurable or uninsurable) and, if not available, whether U.S. companies can operate without that protection of government indemnification. The answer to both questions may depend upon the level of risk associated with those activities, a matter than remains to be seen. Absent insurance and indemnification, Lockheed Martin suggested that it would be appropriate for industry and the government to address the matter of claims compensation for innocent third parties in the event industry concludes it can operate in that environment. However, if industry finds it cannot so operate then, in Lockheed Martin's opinion, it may be appropriate to consider further statutory amendment to allow the FAA to ensure provision of seamless financial responsibility by RLV licensees.

Lockheed Martin further noted that the absence of seamless FAA licensing authority over an RLV mission involving on orbit activities along with the ability to establish seamless financial responsibility requirements could make claims processing arising from a single RLV mission a difficult, time consuming and contentious matter. That is because arguments may arise as to when the occurrence giving rise to a claim took place, that is, whether a claim arises out of licensed or unlicensed activity and, if licensed, whether it arises out of launch or reentry where the FAA requires different amounts of insurance for the two flight phases that comprise a licensed RLV mission. Absent greater understanding of the nature of on orbit activities that would be unlicensed under the FAA's current authority, and their attendant risks, Lockheed Martin believes that it is premature to conclude that a legislative solution to extend CSLA licensing and risk allocation provisions to those activities is necessary.

Comments submitted by Marsh, a liability and space insurance broker, also expressed concern over the potential for dispute between insurer and insured as to when a loss occurs and applicable liability limits when gaps exist between indemnified and non-indemnified activities. Marsh further observed that absence of seamless CSLA financial responsibility and risk allocation coverage will drive industry to insure against maximum possible, rather than probable, loss when it is yet unknown whether and the extent to which the insurance market will be willing and able to respond to non-indemnified risk. Moreover, the benefits currently derived under the CSLA of a single liability policy covering all participants and of minimizing costs and risk of inter-participation litigation would not extend to unlicensed activities on orbit. As a consequence, RLV participants would face increased insurance costs inasmuch as each would need to cover its resultant liability to third parties and to each other that arise out of on orbit operations. Marsh noted that its purpose in registering concern is to alert the launch industry to risk management issues in analyzing risk during on orbit activities; however, Marsh takes no position on the FAA's proposed approach to addressing reentry and RLV financial responsibility. The FAA acknowledges and appreciates the insights and observations contributed to this rulemaking by Marsh in its role as professional risk and insurance consultant to the aerospace industry.

The FAA's careful consideration of comments to the reentry financial responsibility NPRM regarding appropriate definitions of ''launch'' and ''reentry'' and on the appropriate scope of RLV mission licenses for purposes of implementing statutory financial responsibility and risk management tools is reflected below.

Response to Comments on Proposed Scope of RLV Mission Licensing

The FAA concludes that this final rule as well as the Final RLV Licensing

[3] The IIP of a vehicle reflects a projected impact point on the surface of the Earth where the vehicle or vehicle debris in the event of failure and break-up would land. A vehicle on orbit does not possess an IIP.

and Reentry Regulations reflect the limits of FAA authority over RLV mission launch and reentry licensing granted to the FAA. The FAA remains mindful of the charter granted to it for RLV and reentry operations under the recent amendment of the CSLA and is wary of exceeding it at the risk of providing to licensees a false sense that all activities in space involving an RLV or other reentry vehicle, in essence, indemnified by the U.S. Government. FAA statutory licensing authority is limited to those transportation events having Earth orbit or outer space, and purposeful return to the surface of the Earth, as their intended destinations, as well as a suborbital rocket launch. The nature and extent of on orbit activity, including appropriate risk management for that activity, remains a business and operational decision of the vehicle operator, alone or in combination with its customers and insurers, and not a matter subject to FAA regulatory oversight. Stated another way, the conduct of commercial business in space, other than transportation to and from space, remains outside the sphere of FAA regulatory control.

An argument along the lines suggested by Boeing could be constructed that by defining launch to include ''to place or try to place a launch vehicle or reentry vehicle and any payload'' otherwise in outer space, Congress intended to grant to the agency continuing licensing jurisdiction over vehicle and payload operations; however, the FAA believes that such a broad reading of the statute would ignore the plain meaning and use of the term ''place'' in the definition and require substituting it with the term ''operate.'' Boeing's view is therefore not supported by a plain reading of the statute and is not adopted by the FAA. 49 U.S.C. 70102(3).

The control test over RLV operations suggested by Space Access and Boeing in order to assure licensing and indemnification coverage throughout an RLV mission, as well as the aircraft analogy reflected in comments submitted by Boeing and Vela, are also interesting but overlook statutory limits on FAA authority. As previously mentioned, reentry licensing restrictions will, to some extent, affect on orbit operation of RLVs and other reentry vehicles but a comparison of the Federal Aviation Act and CSLA reveals fundamental differences. For one thing, the FAA issues airworthiness and operating certificates as a requirement for operating aircraft whereas the CSLA specifically limits FAA licensing authority to the events of launch and reentry, to and from space, and operation of launch and reentry sites. It does not authorize the FAA to license all vehicle operations, wherever conducted.

Accordingly, the Final RLV and Reentry Licensing Regulations and associated financial responsibility requirements established in the final rule reflect the limits of FAA ''launch'' and ''reentry'' licensing authority. The two companion rules are intended to provide some level of predictability and certainty to prospective RLV and other reentry vehicle operators so that they may make appropriate business and risk management decisions as their business plans and technology develop. In some instances, the FAA will need to address the unique circumstances presented by a vehicle proposed for launch or reentry on an individual basis, sometimes referred to as a case-by-case determination, and will provide mission-specific precision through license terms and conditions; however, the two companion rules establish the principles upon which such determinations will be based.

Definitions of ''launch'' and ''reentry,'' when applied to an RLV, and the scope of FAA licenses for both launch and reentry activities are presented as part of the Final RLV and Reentry Licensing Regulations. In that companion rulemaking, the FAA resolves that licensed launch of an RLV begins with arrival of the launch vehicle or its major components at a U.S. launch site, consistent with the FAA's public safety mandate, and concludes upon completion of the launch phase of the mission. Where payload deployment is a purpose of the mission, that event marks the end of licensed launch of an RLV. For other orbital RLV missions, that is, where payload deployment is not a mission objective, as discussed in greater detail below, the FAA defines the end of an authorized RLV launch as occurring at the completion of the first sustained or steady-state orbit of the vehicle in its intended orbit, consistent with the FAA's safety mandate over launch operations. The Final RLV and Reentry Licensing Regulations also define ''reentry'' to include the conduct of activities directed at determining reentry readiness and that are therefore critical to ensuring public health and safety and the safety of property during reentry.

The FAA reaches its conclusions in the face of concern expressed by Boeing that the United States retains certain obligations arising out the Outer Space Treaties that will not be fully addressed or discharged through RLV mission licensing regulations, such as responsibility for continuing supervision of activities of non-governmental entities in outer space. (Outer Space Treaty, Article VI). Limits on FAA licensing authority originate in the CSLA and are observed in this rulemaking and the companion Final RLV and Reentry Licensing Regulations. While on orbit, RLVs and other reentry vehicles are not unlike other satellites that are operated and maneuvered and, in so doing, may interfere with or cause damage to the other assets in space. This is no different than the situation that exists today regarding many satellites, generally without problem or objection. In any event, the FAA does not have the power to change that result through rulemaking or an inappropriate assumption of authority over payloads or vehicle operations on orbit that are not properly deemed part of a launch or reentry, as Boeing suggested.

Cost and availability of insurance for unlicensed activities on orbit remains to be seen and the FAA will look to industry to advise the agency when, and if, unavailability of insurance for such activities creates an impediment to RLV technology development. As a practical matter, cost and availability of third party liability insurance for an RLV that remains on orbit for an extended time after launch and before initiating reentry should be comparable to that obtained under current business practices for other satellites on orbit. To the extent commenters are concerned about damage caused by an RLV to another vehicle or object on orbit with which it is intended to dock or otherwise make contact, the FAA believes that such concerns are best addressed contractually between the owners and operators of those vehicles or objects such as through voluntary reciprocal waivers of claims agreements or insurance, and that it is not a matter implicating third party liability insurance under the CSLA. For other on orbit operations, the FAA believes that it is premature to assess the risk of such activities and determine whether they are insurable or not.

Specific comments to the NPRM on the proposed scope of RLV mission licensing from the perspective of financial responsibility and risk management are addressed below.

1. Definition of ''Launch'' of an RLV

Notwithstanding the jurisdictional issue concerning RLV on orbit operations, many comments suggested alternative commencement and endpoints of an RLV launch to that presented in the Proposed RLV and Reentry Licensing Regulations for purposes of defining the activities authorized by an RLV mission license

and the risks intended to be addressed through FAA licensing and CSLA financial responsibility and risk allocation.

a. *Commencement of RLV ''launch.''* The Proposed RLV and Reentry Licensing Regulations defined the commencement of an RLV launch in a manner consistent with that appearing in 14 CFR 401.5, and currently applicable to ELV launches. Launch would therefore include pre-flight ground operations commencing upon arrival of a launch vehicle (or its major components) or payload at a U.S. launch site.[4]

Kistler, Vela and the New Mexico Office of Space Commercialization (New Mexico) which plans to operate an inland launch and reentry site for RLVs objected to including pre-flight operations as part of launch. Kistler and New Mexico protested that in the absence of valuable U.S. Government range facilities, there is no need for CSLA-driven insurance and indemnification for pre-flight activities at a commercial launch complex. In fact, they argued that the lack of any need for government indemnification at such sites provides them a competitive advantage over more crowded, Federal launch ranges. New Mexico further believes that licensing pre-flight activities and thereby subjecting them to CSLA-based financial responsibility requirements limits flexibility in commercial arrangements between a launch site operator and its customer (the launch operator). Accordingly, launch should begin at engine ignition, according to New Mexico. Kistler acknowledged recent amendment of the CLSA to include preparatory activities within the statutory definition of ''launch,'' but suggested that it is sufficient to limit licensing and associated financial responsibility requirements to steps that are critical to initiating flight, unique to space launch and so hazardous as to warrant regulatory oversight by the FAA.

The FAA retains arrival of the launch vehicle at a U.S. launch site as the point at which launch begins and licensing is required for an RLV in the Final RLV and Reentry Licensing Regulations, and therefore licenses certain preflight activities. The FAA bases its determination on the statutory definition of ''launch,'' and on risks to third parties posed by vehicle-related operations at a U.S. launch site upon arrival of the vehicle. (*See* Final Rule, Commercial Space Transportation Licensing Regulations, 64 FR at 19591–93, issued April 21, 1999.) The FAA believes that a consistent definition of the commencement of launch is appropriate and necessary for both ELVs and RLVs because of the nature of hazardous pre-flight operations that are undertaken upon vehicle arrival at a U.S. launch site. Risks to third parties and third-party property as a result of pre-flight processing hazards appear comparable, based upon the FAA's current understanding of proposed vehicle operations, regardless of the reusability of the launch vehicle. Moreover, the statutory definition of launch does not differentiate on the basis of type of launch vehicle. From a financial responsibility and risk management perspective, the FAA does not agree with comments that suggest imposition of such requirements is driven by the need for indemnification, or that it will hinder the competitiveness of non-federal launch sites. If, as some comments suggested, there is little risk to third parties and third-party property at non-federal sites, reduced risk will be reflected in lower MPL determinations and associated insurance requirements that are lower than those currently imposed for pre-flight ELV operations at Federal launch ranges.

The FAA notes that some commenters confuse the U.S. Government's statutorily-directed contractual waiver of property damage claims in excess of required insurance with the catastrophic third-party claims protection afforded participants in licensed launch activity, known as indemnification. The interested public is referred to the Final Rule; Financial Responsibility Requirements for Licensed Launch Activities (63 FR 45592–45626, issued August 26, 1998), for a comprehensive discussion of risk allocation principles under the CSLA when launches take place at a Federal range facility and expose valuable national range assets to risk of damage or loss.

Kistler's comments pointed out that an RLV also arrives at a launch site at the end of flight when it reenters from Earth orbit and therefore must be covered immediately by a launch license for the next flight of that vehicle, and that this is an illogical result of applying the definition of an ELV launch to an RLV. Similarly, Space Access stated that under the proposed definitions of launch and reentry, it is unclear when one mission ends and another begins for an RLV that will land, or arrive, at the launch site. Vela pointed out that RLVs will be substantially intact, with major components present at the launch site, once their initial construction is completed, unlike ELVs. As a result, an idle RLV awaiting its next mission would be subject to launch licensing, and that this, too, is an illogical result of the definition in Vela's opinion.

The FAA makes no change to the commencement point of ''launch'' in the Final RLV and Reentry Licensing Regulations on the basis of the comments. FAA licensing is necessary when presence of a launch vehicle in anticipation of a launch presents risks to public safety at a launch site in the United States. The detailed analysis presented in the supplementary information accompanying the Commercial Space Transportation Licensing Regulations, issued April 21, 1999 (64 FR 19586), explains at great length that arrival of a launch vehicle at a U.S. launch site occurs when it passes the gate, or entry point, to the site. Although reentry includes return flight of a reentry vehicle from Earth orbit or from outer space to (and including) Earth, landing at a reentry site ought not be confused with the vehicle's initial arrival at the entrance to a launch site. As explained in the Final RLV and Reentry Licensing Regulations, the FAA understands that a vehicle will, in all likelihood, undergo operations following its reentry to secure the vehicle and mitigate the risks associated with any remaining on-board hazardous materials. These events are part of the reentry, as opposed to subsequent launch, of the vehicle and associated risks and third party loss or damage, if any, would be assessed in determining MPL for that reentry. A vehicle that is inert, passive and presents no risk to third parties, such as an RLV that is effectively in storage, may not require a license to remain at the launch site; however, a fueled and armed vehicle at the facility that is idle because it is awaiting a payload must be covered by FAA licensing and would remain subject to FAA regulatory oversight, including financial responsibility requirements under 14 CFR part 440.

Maintenance and refurbishment activities will also be required to prepare a vehicle for its next mission and these events may impact public safety and risk to third parties, much like pre-flight preparatory processing of any launch vehicle. The FAA reserves to future rulemaking the matter of regulations governing maintenance and refurbishment of a vehicle between RLV missions; however, the FAA anticipates

[4] Reference to payload arrival in 14 CFR 401.5 in the definition of ''launch'' was included on the presumption that a payload would arrive at about the same time, or after, arrival of a launch vehicle and was not intended to suggest that payload processing activities require FAA licensing. Activities involving a payload for which an FAA license is required would be those associated with the launch vehicle, such as integration of a payload with the vehicle.

that when such activity poses risk to uninvolved persons and property it may require regulatory oversight, possibly under an FAA license, and insurance (or other form of financial responsibility) in the event of damage or loss to third parties. Given that such activities are preparatory and necessary to ensure safe vehicle flight from Earth, in addition to being hazardous, the FAA may determine that such activities are properly regulated under the FAA's authority over launch of a launch vehicle and subject to financial responsibility requirements in accordance with 14 CFR part 440.

b. *End of RLV Launch.* The Proposed RLV and Reentry Licensing Regulations erroneously failed to specify in the regulatory text that launch of an RLV would end upon accomplishment of the launch phase of the mission, specifically, payload deployment for those orbital RLVs having that as their mission objective. A more elaborate discussion of the scope and endpoint of RLV launch authorization appears in the NPRM at 64 FR 54452, in order to identify that phase of RLV launch operations covered by CSLA-based financial responsibility and risk allocation and differentiate them from on-orbit operations not intended to be covered by the CSLA risk management regime. The FAA proposed payload deployment in order to provide a bright line demarcation between authorized launch and other RLV-related operations.

Eight of the ten comments submitted to the docket addressed the appropriate endpoint of RLV launch authorization. Once again, putting aside the issue of on orbit jurisdiction over RLV operations, the comments did not disagree with the FAA that the event of payload deployment proves an appropriate point at which to deem launch activities concluded for those RLVs whose mission and design is directed at deployment of a payload. However, the comments pointed out that many RLVs will have other mission objectives, such as servicing the International Space Station or space tourism, and the proposed definition is therefore insufficient for those RLVs. Lockheed Martin's comments noted that because launch and reentry, but not on orbit operations, are events requiring a license and therefore subject to CSLA requirements including financial responsibility and allocation of risk, it is critical that definitions of launch and reentry be tailored to the needs to RLVs and other reentry vehicles.

In the NPRM, the FAA explained the scope of activities that would be comprehended by a launch and reentry license for an RLV mission for precisely the reasons indicated by Lockheed Martin. At the time the NPRM was issued, the FAA understood that the RLV market would be comprised mostly of payload deployment missions conducted to loft and replenish low Earth orbit satellite constellations. Accordingly, the FAA attempted to define the end of launch for the majority of RLV missions forecast in the near term. In light of recent changes in market projections and the surge in other aspects of space commercialization, it is appropriate to define the endpoint of RLV launches that do not involve deployment of a payload. The FAA does so in the Final RLV and Reentry Licensing Regulations based upon the FAA's public safety concerns and concludes that launch ends upon accomplishment of the launch phase of the mission, as discussed in the NPRM, 64 FR at 54452. In an effort to provide clarity, the Final RLV and Reentry Licensing Regulations provide that the launch phase of the mission is accomplished upon payload deployment for those RLVs having payload deployment as a mission objective. For other orbital RLV missions, the launch phase is accomplished upon completion of the first sustained orbit of an RLV in a steady state condition at its intended orbit. In the Final RLV and Reentry Licensing Regulations, the FAA explains that once an orbit in such condition has been completed, the risk of an unplanned event, such as unintentional reentry or collision, is sufficiently small that FAA regulatory oversight is no longer required to fulfill its public safety mandate.

The FAA's definition of the appropriate endpoint of an RLV launch in which no payload is intended to be deployed is similar in nature to suggested alternative endpoints offered in a number of comments. For example, Kistler proposed that launch would end for any RLV whether or not its mission is payload deployment at the first full cessation of thrust after the extinction of the instantaneous impact point (IIP) of the vehicle but in no event later than payload deployment. By suggesting extinction of the IIP as the appropriate launch endpoint, Kistler takes into account risk to the public and property on the ground, that is, the point at which vehicle debris would not impact the surface of the Earth, should break-up occur. Kistler's suggestions avoids a launch scenario in which RLV reentry occurs before payload deployment is concluded where the RLV uses an expendable upper stage to deploy its payload. The FAA declines to adopt Kistler's proposal because it does not address on orbit collision risks that may also be a direct result of an RLV launch and therefore does not adequately fulfill the FAA's safety mandate.

Space Access took issue with defining the end of the RLV launch differently from the end of an RLV launch and proposed instead that launch continues ''through the point after payload separation when the last action occurs over which a licensee has direct or indirect control over the launch vehicle.'' The FAA does not agree that a control test, or an event test that signals the last act of control, is appropriate for RLVs given the FAA's understanding that most operators plan to retain some form of control over their vehicle while on orbit until it reenters. Defining an RLV launch in such a manner would lead to the result that launch is not concluded until the mission, inclusive of reentry to Earth, has been completed. Under that interpretation, the only reentry requiring FAA licensing would be that of a reentry vehicle launched initially as a payload that subsequently reenters, as in the COMET or METOR situation described in the NPRM or other vehicle meeting the definition of rentry vehicle that was not launched as an RLV. The FAA concludes that the result of this interpretation runs contrary to the statutory definition of reentry inasmuch as a reentry requiring FAA licensing under the CLSA specifically includes reentry of an RLV.

Other suggested endpoints of an RLV launch include the following comments.

- The Experimental Rocket Propulsion Society (ERPS), a developer of rocket engine technology for use by commercial entities, suggested a 3-phase approach to RLV regulations as follows: launch, on orbit and reentry. In order to accommodate a broader range of RLV missions, ERPS proposes that the launch phase would end when an RLVs main engine stops *and* the desired trajectory or orbit is achieved. Doing so is necessary, according to ERPS, to avoid the ''regulatory surrealism'' of perpetual launch that would otherwise result for those RLVs that will not deploy a payload. ERPS noted that its proposed definition of launch could be interpreted to include a circularizing burn as part of launch, even though it occurs after main engine cut-off, because the vehicle is not yet in attainment of its intended orbit.
- Orbital Sciences Corporation (Orbital Sciences) suggested an expanded definition of launch to mean activities through ''payload deployment, insertion into a stable orbit, or

preparation for reentry, whichever comes first.''

• Boeing recommended a broad definition of RLV launch to include accomplishment of the launch phase of any RLV mission. The FAA used those words in the supplementary information accompanying the NPRM in defining the end of the launch phase as the point of payload deployment for RLVs having that as their mission. The FAA agrees with Boeing to the extent that the launch phase of the mission is construed to mean achieving and securing the intended orbital destination of an RLV before other operations are performed. The FAA would not agree with Boeing if, by accomplishment of the launch phase of the mission, Boeing means to include the conduct of operations on orbit uniquely associated with a particular mission, such as International Space Station and satellite servicing or on orbit research, as Boeing's comment suggested.

• Vela, consistent with its mission approach to RLV flight, dismissed the need to define and distinguish among launch and reentry for risk allocation purposes as the result of a lack of understanding of RLVs in general. In Vela's view, launch will end, even if it is with a shower of debris, and must be covered by CSLA financial responsibility and allocation of risk.

The FAA remains mindful of the limits of the statutory grant of licensing authority recently extended to it, that is, licensing the launch of a launch vehicle and the reentry of a reentry vehicle, and restrictions on FAA authority over on orbit operations envisioned by the Committee. In the revised definition of launch that appears in the Final RLV and Reentry Licensing Regulations, as applied to an RLV, the FAA establishes the endpoint of an RLV launch in terms of accomplishing the launch phase of a mission and provides bright line clarity in the following manner. RLV launch ends upon payload deployment for orbital RLVs having that event as a mission objective. For those RLVs, deployment of the payload properly identifies the end of the transportation service offered by a launch vehicle and for which FAA regulatory safety oversight is necessary. Mitigation of collision risks, and the associated potential for debris generation, that attend payload deployment would also be subject to FAA regulatory controls. For those orbitals RLVs that do not have payload deployment as a mission objective, launch ends upon completion of the first sustained, steady-state orbit of an RLV at its intended destination. This definition offers the benefit of avoiding the need for individual determinations of the end of an RLV launch on a case-by-case basis using other, more particularized mission objectives as the measuring yardstick. The FAA includes attainment of the intended orbital destination of the vehicle as part of the definition because an RLV may fail to reach the orbit for which it was intended. Where that occurs, and assuming the vehicle remains in the licensee's control, a licensee would typically employ risk mitigation measures and perform maneuvers necessary to accomplish an orbital correction rather than risk its vehicle and success of the mission. The FAA would view corrective maneuvering as part of the launch. The FAA's rationale including such corrections as part of the launch is that the intended orbit was approved as part of the FAA's launch safety approval and assessment process, and anything short of that creates uncertainty and risk from a public safety perspective. The FAA would have reviewed hazard analyses and risk mitigation measures, such as maneuvering for orbital correction, as part of the licensee's application. Thus, it is necessary from a regulatory perspective that licensed launch activities include adjustments and corrections necessary (and planned and evaluated as part of a license application) to achieve vehicle stability in the intended orbit. Whereas corrections and adjustments performed to achieve the first intended orbital destination are part of the launch, the same is not true for on orbit maneuvers performed after launch, as defined by the FAA, in the conduct of further RLV business in space, such as satellite servicing or docking.

2. Definition of ''Reentry'' of an RLV

a. *Commencement of ''reentry.''* Under the CSLA, as recently amended, ''reenter'' and ''reentry'' are defined to mean ''to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth.'' 49 U.S.C. 70102(10). A ''reentry vehicle'' includes an RLV under the CSLA. 49 U.S.C. 70102(13). The Proposed RLV and Reentry Licensing Regulations define ''reentry'' to include ''activities conducted in Earth orbit or outer space to determine reentry readiness and that are therefore unique to reentry and critical to ensuring public health and safety and the safety of property during reentry. 64 FR at 19656.

In an effort to add clarity and precision to the FAA's implementation of reentry licensing authority, the NPRM elaborated upon the regulatory definition of ''reentry'' included as part of the Proposed RLV Licensing and Reentry Regulations, and amplified upon the underlying justification for the agency's proposed approach.

The NPRM explained, in detail, the FAA's rationale for licensing the conduct of reentry readiness activities. Just as risks to public safety and to property resulting from launch activities become sufficiently heightened to warrant FAA safety regulation upon arrival of a launch vehicle at a U.S. launch site, risks to public safety and property change upon commencement of certain activities conducted in anticipation of reentry flight and likewise rise to a level at which safety oversight and approval by the FAA is appropriate. A vehicle must be properly positioned and oriented to achieve its intended reentry trajectory. Safety systems, hardware, software, and structures must be verified to be in reentry-ready condition and configuration to assure public safety is not jeopardized as a result of a reentry attempt. Except where reentry will occur as a result of ballistic forces, adjustments in safety systems and vehicle positioning may be required for a licensee to conduct planned reentry as contemplated by its license application and in compliance with authority granted by the license. Where reentry readiness cannot be verified or achieved, a license may be required to employ contingency plans, such as abort to orbit or reentry to an alternative, approved location.

Including those preparatory activities conducted to determine reentry readiness as part of licensed reentry does not contravene guidance offered by the House Committee on Science (the Committee) in a report accompanying passage of H.R. 1702, the predecessor to the CSA, on the scope of FAA reentry licensing authority. H. Rep. 105–347, 105th Cong., 1st Sess. (Committee Report). Although the Committee Report is not binding as law, it provides instructive guidance to the FAA in delimiting regulated reentry activity. In it, the Committee specifically notes that the legal framework applicable to launch applies to reentry. In amending 49 U.S.C. Subtitle IX, chapter 701, the CSA grants to the Secretary of Transportation ''the same authority and responsibility with respect to the licensing and regulation of the reentry of reentry vehicles as existing law provides to the Secretary with respect to the launch of vehicles.'' *Id.* at 21. Under longstanding authority, FAA launch licenses authorize preparatory activities involving a launch vehicle at a launch site in order to fulfill the FAA's safety

mandate. Licensing is necessary because such activities expose third parties to safety risk and therefore require FAA regulatory oversight.[5] Final licensing regulations issued by the FAA on April 21, 1999, clarify that licensed activity is deemed to begin upon arrival of a launch vehicle at a U.S. launch site. The amended CSLA imposes on the agency safety responsibility over reentry comparable to that applicable to a launch. Because the conduct of reentry readiness activities directly affects risk to public safety and to property, fulfillment of the agency's safety mandate would best be achieved by assuring that such activities are conducted under FAA approval, oversight and authority. Accordingly, the Proposed RLV and Reentry Licensing Regulations included such activities within the scope of a reentry license.

The Committee Report contemplates flight phases, consistent with the FAA's approach to RLV licensing. It provides that ''[t]he Committee intends that for purposes of the license requirement, reentry begins when the vehicle is prepared specifically for reentry. By way of definition, the Committee intends the term to apply to that phase of the overall space mission during which the reentry is intentionally initiated.'' *Id.* Additional guidance reflects the Committee's general sense that reentry begins when the vehicle's attitude is oriented for propulsion firing to place the vehicle on its reentry trajectory, but acknowledges that the reentry phase will vary based upon the particulars of different vehicle systems.

In proposing to include preparatory activities as part of the FAA's reentry licensing authority, the FAA remained mindful of Committee Report language noting that procedures and activities preceding initiation of reentry are not intended to be encompassed within the agency's licensing authority. *Id.* at 22. At the same, the Committee acknowledged the FAA's need to assure itself of a licensee's capability to carry out safe reentry without jeopardizing critical national interests.

Reentry licensing authority, as proposed by the FAA in Proposed RLV and Reentry Licensing Regulations, would also be consistent with this aspect of the Committee Report guidance. Reentry licensing would be confined to those activities that would have direct impacts upon public safety and the safety of property if not performed in accordance with FAA approvals. The conduct of such activities may trigger or proximately result in occurrence of an anomalous event causing damage or loss to persons or property not involved in the reentry. Moreover, the FAA's safety review and approval is premised upon the adequacy from a public safety perspective of the conduct of such activities which, if not done properly, could invalidate the basis upon which the FAA determined that reentry could be performed safely. Hence, only those activities that are unique to reentry and critical to carrying out safe reentry, as opposed to those that are merely indicative of an operator's capabilities, would require an FAA license.

Consequences of a non-nominal reentry would therefore be addressed through CSLA risk allocation measures if reentry occurs in the course of licensed activity or is determined to result from activity carried out under the license, that is, if a fact-based inquiry indicates a sufficient casual nexus exists between the claim and licensed activity. Non-nominal reentry resulting from unlicensed activity, on orbit, after a nominal launch would not qualify for indemnification, nor would claims resulting from collision with another orbiting space object during unlicensed on orbit activity.

The NPRM further pointed out the benefits of licensing reentry readiness activities under the FAA's reentry authority. By including within the regulatory definition of ''reentry'' those activities conducted to determine reentry readiness, such as verification of safety systems and performance of reentry system status checks, the Proposed RLV and Reentry Licensing Regulations would include certain preparatory activities within the scope of a reentry license. The proposed definition would implement effectively the FAA's safety responsibilities and, from a financial responsibility perspective, enable and enhance meaningful risk allocation under the CSLA. Thus, operators would be relieved of the need to privately manage the risks that would otherwise attend such activities. Because risk to public safety and the safety of property change upon commencement of reentry readiness activities, and because such activities are directly related to protecting public safety and the safety of property, including preparatory activities as part of licensed activity ensures meaningful risk management and allocation for reentry operations in accordance with CSLA objectives. In determining insurance requirements for a licensed reentry, the FAA would identify sufficiently probable risks and outcomes that would result from reentry readiness activities under a license and set financial responsibility requirements accordingly.

Where vehicle operations are not licensed, the FAA noted in the NPRM that reentry vehicle operators must manage resultant risks as a private business decision. As stated in the NPRM, the United States accepts fault-based liability as a launching State under the Liability Convention, Article III, for damage to another launching State's on orbit space object if damage is the fault of the government or persons for whom the United States is responsible. Absent a clear casual nexus to a licensed launch or reentry, risk allocation under the CSLA does not apply and indemnification would not be available to cover liability of launch or reentry participants to third parties for on orbit damage. Where the statute does not apply, the government may fulfill its treaty obligations and seek contribution or compensation from entities at fault for the damage.

At the time the NPRM was issued the FAA understood that most of the RLVs under contemplation and development were intended to spend minimal time on orbit in order to reduce costs and risks to the vehicle. Additional time spent on orbit would entail additional cost and expose the vehicle to risk from other orbiting objects. Once returned to Earth, an RLV could be secured intact and refurbished for its next mission. It therefore seemed likely that most EPA operators would seek swift return of their valuable asset and would not leave a vehicle exposed to the risks of the space environment except as necessary to engage in activities and check outs designed to ensure the vehicle could return safely and intact, in accordance with the approval for reentry granted by an FAA license. Accordingly, the FAA forecast that payload deployment would be followed immediately by preparation for reentry and therefore seamless financial responsibility coverage under the CSLA would result. For those RLVs, a non-nominal reentry would generally occur as a result of licensed reentry and would be covered by CSLA-directed financial responsibility. In this context, the FAA requested comment on the scope of proposed reentry licensing authority from a financial responsibility and risk management perspective. The FAA also sought comments from a financial responsibility and risk management perspective on the

[5] Recent amendment by the CSA of the statutory definition of the term ''launch'' is intended to make clear that preparatory activities requiring licensing are those conducted at a launch site in the United States. The amendment resulted from concern that increasingly mobile launch systems utilizing multiple launch sites in preparation for a single mission were not adequately covered by FAA licenses.

appropriate commencement of reentry licensing authority for other RLV missions, such as those with delayed reentry or that are intended to perform on orbit activities not deemed ''launch'' or ''reentry.''

Boeing expressed dissatisfaction with the proposed definition of reentry because of the potential for interpretive conflicts over qualifying activities. For consistency, Boeing suggested that reentry begins, for regulatory purposes, with planning activities, followed by ignition of RLV retrograde propulsion systems and subsequent first movement toward the atmospheric entry interface (EI). The FAA does not agree that Boeing's suggestion adds clarity to the proposed definition. Although reference to ignition and subsequent events is clear, the FAA does not believe that reference to ''planning activities avoids the potential for debate Boeing believes will result from the FAA's proposed definition and, as discussed in the companion Final RLV and Reentry Licensing Regulations does not make any change to the definition on the basis of Boeing's comment.

Kistler also regarded as imprecise the FAA's proposed definition of reentry inasmuch as it may be impossible to attribute an on orbit activity exclusively to reentry or in furtherance of reentry readiness. More importantly, Kistler suggested that in applying this definition, the FAA has attempted to regulate on orbit operations that Congress did not intend the FAA to license. According to Kistler, to the extent the FAA has done so in an effort to extend to an anomalous reentry the benefits of the CSLA financial responsibility and risk allocation regime, specifically indemnification, Kistler does not believe such regulatory oversight is necessary or within the agency's authority. In support of its position, Kistler noted that the NASA Space Shuttle, the only operational RLV, has never experienced an unplanned reentry. Moreover, should a vehicle experience a non-nominal reentry, it would in all likelihood break up and/or burn up upon entry into Earth atmosphere and there would be no need for indemnification, according to Kistler. The FAA acknowledges that although this statement may be correct for certain vehicles, the Final RLV and Reentry Licensing Regulations address the agency's regulatory approach to evaluating the hazards that attend random reentry.

Kistler further noted that a non-nominal reentry that is accidental, inadvertent, unplanned, unintentional or unexpected would not satisfy the statutory definition of a reentry inasmuch as it cannot be termed ''purposeful.'' Kistler cited congressional report language stating the ''[b]y way of definition, the Committee intends the term to apply to that phase of the overall space mission during which reentry is *intentionally* initiated.'' (Emphasis supplied.) Therefore, reentry readiness activities conducted on orbit are outside the scope of FAA licensing jurisdiction, according to Kistler, and indemnification to cover inadvertent reentries is not required by the CSLA.

In place of the FAA's definition, Kistler suggested that, for purposes of FAA licensing, reentry should not be deemed to begin before an IIP is created and in no event should it exceed the expectation reflected in the Committee Report that reentry begins when the vehicle's attitude is oriented for propulsion firing to place the vehicle on its reentry trajectory. Kistler argued that by limiting reentry to vehicle orientation for propulsion firing, the Committee intended to extend indemnification to ''what it perceived as an operation (reentry) that posed a threat to people and assets on the ground.'' According to Kistler, a misplaced desire to extend to an unplanned reentry the benefits of indemnification by licensing on orbit activities would burden industry by requiring additional analyses and insurance without any needed benefit.

ERPS similarly suggested that the FAA proposed to define reentry too broadly by including on orbit operations commencing immediately upon payload deployment in an effort to extend to a non-nominal reentry the benefits of statutory indemnification. ERPS agreed with including within the scope of a reentry license activities conducted on orbit in preparation for reentry, as defined by the FAA, but disagreed that such activities would necessarily commence immediately upon deployment of a payload. According to ERPS, a non-nominal reentry is a purposeful intentional event subject to FAA reentry licensing; however, a premature reentry would be an unintentional event. Nevertheless, ERPS suggested that having obtained an FAA license and having the intent to reenter, together, would be sufficient to satisfy the CSLA and extend statutory indemnification to the consequences of a non-nominal reentry event, whenever it occurs. In ERPS's opinion, this interpretation of the CSLA is preferable to regulation of an orbit activities following payload deployment in order to conclude that indemnification would be available in the event of a premature, errant or otherwise non-nominal reentry. ERPS expressed its views in the face of extensive discussion in the NPRM of non-nominal reentry from a financial responsibility and risk allocation perspective. (*See* NPRM, 64 FR at 54453–54455).

The FAA has not suggested that the term ''purposefully'' that appears in the statutory definition of ''reenter'' and ''reentry'' is intended to necessarily exclude premature or other non-nominal reentries from the risks intended to be addressed through CSLA-directed financial responsibility and risk allocation. Rather, it was included, the FAA believes, to distinguish planned intentional reentry of a reentry vehicle from entry into Earth atmosphere of debris and other objects that are not reentry vehicles, that is, that are not designed to reenter substantially intact, and that deorbit naturally as a result of the space environment and orbital mechanics, such as orbital decay. The FAA considers unplanned events that occur during licensed activity, such as premature or non-nominal reentry, to result from licensed activity and would require financial responsibility to cover the consequences of such events. Similarly, an unplanned or premature launch of an ELV has occurred. For example, ELV launches have occurred at a Federal range facility as a result of electrical charges supplied through static electricity. Had such an event occurred during a licensed launch, CSLA financial responsibility and risk allocation would address the consequences.

The basis for including reentry readiness activities as part of FAA licensing authority over reentry is not to maximize indemnification benefits for RLV and reentry vehicle operators. Rather, licensing is appropriate because of the safety risks presented by such activities and the need for FAA regulatory oversight in fulfilling the agency's statutory safety mandate. Covering activities that present public safety risks through the CSLA financial responsibility and allocation or risk regime assures that risks that have the greatest likelihood of occurrence and for which insurance is warranted are, in fact, covered up to the agency's determination of maximum probable loss and makes risk management under the CSLA a meaningful program.

ERPS agreed with the FAA's proposed definition of reentry to include reentry readiness activities that are unique to reentry and critical to ensuring safety, but finds no rationale in congressional report language or the NPRM to conclude that reentry would therefore begin *immediately* following payload deployment. ERPS suggested that

reentry begins at preparation for retrofire for orbital vehicles, and for suborbital vehicles at preparation for atmospheric interface. ERPS's concerns reflect its tentative conclusion that the FAA essentially *requires* reentry to begin immediately following payload deployment, thereby *forbidding* on orbit operations. ERPS is incorrect in its reading of the NPRM. The FAA would neither require immediate reentry, nor forbid on orbit operations. In using payload deployment as the point of demarcation between the end of an RLV launch followed promptly by reentry, the FAA was attempting to address the majority of missions envisioned for RLVs at the time the NPRM was issued. Under the Final RLV and Reentry Licensing Regulations, commencement of licensed reentry would be defined under the terms of an RLV mission license based upon application of the principles established in that companion rulemaking.

Lockheed Martin noted in its comments that definitions of launch and reentry must be tailored to the needs of RLVs and other rentry vehicles and that identifying a uniform point at which reentry begins for all RLVs may not be appropriate.

The FAA appreciates the concern expressed by Lockheed Martin but believes it vital for RLV operators to understand early in RLV and mission design and planning the point at which an RLV would covered by a license and the CSLA financial responsibility and risk allocation regime. Doing so is necessary to enable RLV developers and operators to make informed business and risk management, as well as mission design, decisions regarding unlicensed operations. Accordingly, in the Final RLV and Reentry Licensing Regulations, the FAA defines the commencement of reentry as occurring upon the conduct of reentry readiness activities that are critical to ensuring public health and safety and the safety of property during reentry. Reentry readiness activities include those necessary to accomplish and verify proper vehicle orientation, as well as other safety-critical checks that may be identified or defined in a license term addressing the unique capabilities of a particular vehicle. Activities would not need to be unique to reentry for FAA licensing authority to apply, as discussed in the companion Final RLV and Reentry Licensing Regulations. The point at which licensed activity is deemed to commence for a specific RLV mission would depend upon the unique characteristics and systems of an RLV proposed for flight and would be identified in the license. Concerns of Lockheed Martin should be alleviated, as differences in vehicle systems are addressed through the licensing process.

b. *End of Reentry.* Licensed reentry includes landing or other impact on Earth, as indicated in the Proposed RLV and Reentry Licensing Regulations, and financial responsibility would be required to cover injury, damage or loss to third parties and U.S. Government property resulting from reentry. For ground operations at a reentry site, the NPRM proposed that financial responsibility for reentry remain in effect until completion of licensed reentry activities at the site. The term ''licensed reentry activities'' would be defined in licensing regulations or by a license. To address other liability considerations that attend licensed reentry, including an attempted reentry, the NPRM proposed that financial responsibility remain in place thirty days from initiation of reentry flight, unless a reentry were aborted on orbit. Under those circumstances, the FAA would determine in advance of rentry and based upon its hazard analysis and risk assessment, when risk to third parties and government property resulting from a licensed reentry [6] were sufficiently small as to eliminate the need for insurance provided by the licensee.

As previously indicated, in pointing out deficiencies in the proposed definition of ''launch'' as it applies to an RLV, a number of comments equated reentry on Earth with arrival of a launch vehicle at a launch site. ERPS observed that definitions of launch and reentry for an RLV should be tied to ground operations, rather than specific marker events such as arrival of a lunch vehicle at a U.S. launch site, to avoid illogical results such as launch beginning upon reentry impact at a reentry site (assuming the reentry site is also a U.S. launch site). ERPS suggested that the reentry phase of RLV operations ends when vehicle engines stop and upon completion of post-flight ground operations that hazardous and unique to space transportation. Similarly, Space Access suggested, as the reentry endpoint, the last action performed after landing to safe the RLV for ground servicing in order to separate reentry activities from subsequent launch activities.

For ground operations, which seemed to generate the most concern among commenters, the end of reentry is defined in the Final RLV and Reentry Licensing Regulations to include post-flight ground operations conducted to ensure a reentry vehicle does not pose a threat to public health and safety or the safety of property. Doing so ensures that hazardous ground operations are covered by an FAA license, consistent with ERP's comment.

The FAA agrees with an observation offered by ERPS that where an RLV uses a single site as it launch and reentry site, a revised definition of the commencement of licensed launch activities would be appropriate for a follow-on RLV mission from the same site because the vehicle does not arrive at the gate. The FAA understands that additional regulations addressing maintenance and refurbishment operations between RLV missions may be appropriate and has a research program under way for purposes of identifying operations and maintenance procedures that will be associated with RLV operations. The FAA has presented its research plan to the RLV Working Group of the Commercial Space Transportation Advisory Committee (COMSTAC) in an effort to gain understanding of the kinds of operations and maintenance issues that may require a regulatory solution. As a result of its research, the FAA hopes to benefit from enhanced understanding of when such activities may be deemed to commence when a launch site is also the reentry site for that vehicle.

Comments on Financial Responsibility Aspects of RLV Mission Licensing

Launch and reentry authorizations may be combined in a single license for administrative convenience to the FAA and its regulated entities. However, combining the authorizations to launch and reenter an RLV does not remove or relieve a licensee's responsibility for complying with financial responsibility requirements for both flight phases. Under the CSLA, as amended, insurance requirements attach to a launch license and a reentry license and, for each phase, statutory ceilings on such requirements would apply separately. That is, up to $500 million of liability insurance based upon maximum probable loss from third-party claims may be required for launch, and up to $500 million of liability insurance may also be required for reentry. Unlike an ELV launch for which a catastrophic event generally signals the end of vehicle flight, it is possible to suffer a catastrophic event during either, or both, flight phases of launch and reentry, particularly where the launch vehicle is a multi-stage RLV, and financial responsibility must be available to respond to claims arising

[6] Reentry includes attempted reentry by stature; hence, an abort while in orbit would be covered by a reentry license and considered in determining MPL for a mission.

out of either flight phase. By corollary, in the remarkable event that catastrophic claims result from both flight phases, indemnification up to the statutory ceiling would be available to respond to excess claims arising out of both licensed launch and licensed reentry.

The FAA proposed to reserve authority to establish differentiated insurance requirements as opposed to a uniform amount that must be satisfied for both flight phases. Risk-based methodology, known as maximum probable loss or MPL, would be applied to RLV mission proposals to assess launch and reentry risks associated with the mission and establish insurance requirements for launch and reentry flight. Where the monetary value attributed to such risk are comparable for launch and reentry, a uniform level of insurance would be appropriate and the FAA would impose parallel requirements for launch and reentry. However, where the value, in terms of a dollar amount, of launch risk is measurably different from reentry risk, the FAA would consider it appropriate to differentiate requirements for RLV launch and reentry. For example, an RLV may possess greater blast capability and explosive potential during launch when it is fully fueled than during reentry when it would have exhausted or expelled all or most of its hazardous propellants, justifying a higher amount of financial responsibility for launch than would be necessary for reentry. Under another example, a fully fueled launch vehicle lifting off from an inland launch site may pose greater risk to third parties in terms of the FAA's maximum probable loss analysis than would reentry to a coastal reentry site of a vehicle whose fuel supply has been depleted and that contains no hazardous materials.

Where risks are comparable in magnitude such that uniform requirements are established for both licensed flight phases of the mission, it is still the case that financial responsibility must be available to respond to claims arising during either or both flight phases. Imposition by the FAA of uniform requirements for launch and reentry flight phases of an RLV mission does not relieve or limit the responsibility of a licensee to cover the liability that may result from an RLV mission. In the NPRM, the FAA stressed that financial responsibility requirements would apply to both the launch of an RLV and its entry, up to statutory ceilings. Events resulting in third party liability could occur during either or both flight phases (launch and reentry) of an RLV, and financial responsibility must be available to respond to claims arising out of either flight phase. A licensee would not be relieved of financial responsibility for reentry in the event that its RLV launch results in claims up to or exceeding the launch liability policy limits established by the FAA.

Whether or not uniform requirements would be imposed on all segments of licensed RLV flight, as opposed to differentiated requirements covering launch risk as distinct from reentry risk, the licensee would be responsible for covering the liability that results from licensed activity up to prescribed ceilings. The FAA proposed to reserve authority to make its determination on a case-by-case basis, based upon the results of its risk-based maximumprobable loss analysis. Given that the FAA proposes to authorize RLV missions using a single license to cover launch and reentry flight, the FAA sought public comment on the practicalities of differentiating launch or ascent risk from reentry or descent risk from a risk management and insurance perspective.

A number of comments expressed reservations about the practical effects of distinguishing launch from reentry financial responsibility for an RLV mission.

Lockheed Martin, in consultation with its insurance providers, indicated that claims processing for a single mission could be hampered, particularly where disputes could arise as to whether a claim arose out of licensed or unlicensed (*e.g.,* on orbit) activity. Seamless financial responsibility requirements avoid such difficulties; however, Lockheed Martin acknowledges that the FAA would have to have the statutory authority currently lacking to license on orbit activities, thereby extending financial responsibility burdens and benefits to the conduct of such activities. Nevertheless, Lockheed Martin did not advocate extending CSLA financial responsibility and risk allocation measures to on orbit operation of RLVs. Rather, Lockhead Martin noted that it is premature to conclude that it would be necessary or desirable to do so in light of the early stage of RLV development and lack of appreciation as yet for the scope of on orbit activities to be performed by RLVs and their attendant risks.

Marsh observed that seams in financial responsibility, both in terms of licensed as opposed to unlicensed activity, and in terms of differentiated requirements for launch as opposed to entry, may lead to disputes cover (*e.g.,* whether a claim results from a covered occurrence) and limits (*e.g.,* the occurrence is a covered event but up to what limit of insurance).

Orbital Sciences noted that differentiating launch from reentry insurance requirements could be done at the election of the licensee, where for example, there may be cost benefits for the licensee.

The FAA appreciates these observations and considered, as an alternative, whether certain disputes may best be avoided by requiring a for uniform demonstration of insurance all licensed flight in the higher amount where MPL analysis for launch and reentry yields measurably different results. This alternative has the benefit of removing disputes as to whether an occurrence arose during launch or reentry because the available limits of coverage would be constant regardless of when the event occurred, or if both launch reentry events contributed to the damage, as long as the damage is not claimed to occur during, or result from unlicensed activity. Even so, certain underwriters might be willing to accept launch-related risks, but not those having to do with reentry, or vice versa. However, notwithstanding the benefits of uniform and consistent insurance requirements for all licensed flight, the FAA concludes that it is bound to abide by the plain direction of the statute to set insurance requirements based upon risk, and not for administrative convenience. Absent practical experience in administering combinations of launch and reentry MPL-based requirements in an RLV mission license, the FAA believes it is premature to change its longstanding approach to setting risk-based insurance requirements based upon actual assessment of risk. Accordingly, the FAA reserves discretion to issue differentiated insurance requirements for the conduct of an RLV mission to cover launch and reentry risks. The FAA also understands that variations in liability policies regarding coverage for an occurrence, as the term is defined in the policy, may also result in disputes between insurer and insured and licensees are reminded that, by statute, insurance coverage must be available to respond to claims that *result from* an activity carried out under the license.

Space Access urged a single, seamless financial responsibility requirement for all RLVs, from a technical and practical perspective. As a technical matter, Space Access believes that all RLV activity will affect long-term safety of launch and reentry and should be subject to CSLA requirements throughout an RLV mission. From the practical perspective of paperwork

burdens on the licensee, it expressed concern that differentiated requirements for launch and reentry will complicate the paperwork necessary to demonstrate compliance with financial responsibility requirements.

The FAA does not agree that differentiating the amount of financial responsibility required for launch as distinct from reentry adds measurably to a licensee's compliance burden. Compliance may be demonstrated through a single policy evidencing coverage for all licensed activity. Similarly, a single opinion letter from the insurance broker issuing the certificate of insurance and corporate certification of compliance may suffice if the documents address all licensed activity. No change is made in the FAA's approach to requiring insurance for launch and reentry on the basis of the Space Access comment.

Vela found no more basis for differentiating launch from reentry in terms of setting financial responsibility requirements than it did for licensing launch separately from reentry.[7] According to Vela, it may be appropriate to differentiate requirements when the vehicle's payload will return separately from the RLV, as would be the case for a COMET/METEOR type of reentry vehicle. The FAA agrees that financial responsibility requirements apply to reentry of a payload that is itself a reentry vehicle. An operator of such a reentry vehicle is required to satisfy part 450.

Comments on Financial Responsibility for Suborbital RLV Missions

An RLV that operates as a suborbital rocket inasmuch as it does not enter Earth orbit may be licensed under the FAA's longstanding launch licensing authority over suborbital rockets and subject to a single insurance requirement, issued under part 440, for all flight. However, the Proposed RLV and Reentry Licensing Regulations pointed out that the return to Earth of certain suborbital RLVs may also be licensable as a reentry. As the Proposed RLV and Reentry Licensing Regulations also noted, until passage of the CSA it was not clear whether Congress intended to extend to intact landing of such vehicles on Earth the financial responsibility and risk allocation requirements and benefits of the CSLA, and particularly indemnification, because of the unique risks posed by intact landing. In that proposal, the FAA suggested that the better approach to licensing suborbital RLV missions would be to regard them as launch and reentry, rather than a suborbital launch of a launch vehicle to ensure consistency in the measure of risk to which the public would be exposed from RLV operations. Accordingly, the FAA would apply to RLVs the same mission risk criteria calculated in terms of expected casualties, or E_c, whether an RLV reenters from Earth orbit or returns as part of a suborbital mission. From a safety and risk standpoint, no distinction is made in the Final RLV and Reentry Licensing Regulations between launch and reentry of an orbital RLV and a suborbital RLV. Any RLV mission would be licensed using the safety requirements set forth in that final rule. However, where the return to Earth of a suborbital RLV qualifies as a reentry, the FAA sought public comment on whether to impose financial responsibility requirements upon its launch as distinct from its reentry.

The FAA's request for comments on the proposed distinction between suborbital RLVs that are also reentry vehicles and those that are not, yielded several requests for a definition of where outer space begins. Under its mission approach to licensing suborbitally operated RLVs, there is no need to delimit outer space for purposes of assuring financial responsibility for the mission, as all RLV flight would be covered by FAA requirements.

Vela misconstrued the request for comments from a financial responsibility standpoint on distinctions between a suborbitally operated RLV and those that are not in arguing that the entire flight is subject to licensing, whether or not it reaches a certain altitude. There is no issues as to licensing. The issue posed by the FAA was whether certain RLVs should be subject to a single insurance requirement for the life of the mission or subject to differentiated requirements because they launch and reenter without entering Earth orbit. Comments submitted by Space Access advocated a single, seamless determination of financial responsibility for all RLVs, whether or not they satisfy the definition of a reentry vehicle.

The FAA clarifies its intent with regard to suborbitally operated RLVs in this final rule. The FAA has determined that, consistent with launch and reentry licensing and associated risk management requirements under the CSLA, separate MPL determinations and insurance requirements are appropriate for those RLVs that enter Earth orbit. The requirement for human intervention before commencing reentry, including positive enabling of reentry under the Final RLV and Reentry Licensing Regulations, along with the potential conduct of other intervening activity between launch and reentry, warrant separate MPL analyses and financial responsibility requirements to address the risks that attend launch and reentry of RLVs that enter Earth orbit. However, for those RLVs that operate in a suborbital manner, that is, vehicles that do not enter a closed path and for which return to Earth is a matter of physics rather than human intervention, a single determination of financial responsibility covering all flight risk is deemed appropriate. For such vehicles, satisfaction of part 440 insurance requirements would be necessary to address the risks that attend operation of a suborbital RLV. Use of the reciprocal wavier of claims agreement contained in part 440, Appendix B, would be sufficient to encompass all participants in the mission; however, the FAA would not object to use of the form of agreement that appears in Appendix B of this final rule.

Financial Responsibility for Reentry of a Reentry Vehicle Other Than an RLV

The NPRM focuses upon risk management issues that attend RLV operation but queried when licensed activities should be deemed to commence for other licensed reentries in order to ensure meaningful implementation of statutory financial responsibility and risk allocation requirements.

The Final RLV and Reentry Licensing Regulations apply consistent criteria in defining reentry of an RLV and a reentry vehicle. The same public safety considerations that support FAA licensing authority over reentry activities conducted to determine reentry readiness are also presented by reentry of reentry vehicles that are not RLVs.

Few comments were directed specifically at reentry of a reentry vehicle other than an RLV; however, as previously noted, Vela commented that for such reentries it may be appropriate to differentiate reentry from launch financial responsibility requirements, and the FAA agrees.

Requirements contained in this final rule also to reentry of a reentry vehicle other than an RLV. Prospective operators of such vehicles will not have the benefit of seamless financial responsibility that RLV operators may enjoy in certain circumstances and must

[7] Vela pointed out that an aborted RLV launch will land fully fueled. However, that contingency would be evaluated as part of the safety review for the mission and the associated risk, measured in terms of the probable value of loss to third parties and Government property, associated with an aborted launch would be assessed in establishing launch MPL.

manage liability risk associated with vehicle operations on orbit before commencing reentry entirely through private insurance. In managing those risks, reentry licensees, their customers and contractors and subcontractors must bear in mind that absent a clear causal nexus to a licensed launch or reentry, statutory risk allocation provisions, including indemnification, would not apply to cover their liability to third parties, including liability for damage to other space objects on orbit. Where the statute does not apply and the U.S. Government bears fault-based liability as a launching State under the Liability Convention because of on orbit damage caused by persons for whom the United States is responsible, the government may fulfill its treaty obligations and seek contribution or compensation from entities at fault for the damage.

Other General Comments

A number of comments to the docket remarked generally and favorably upon various aspects of the rulemaking. Kistler, in a particular, noted the positive benefits of rulemaking in eliminating regulatory uncertainty. A number of entities submitting comments to the docket have years of practical experience in demonstrating compliance with financial responsibility requirements for licensed launches. Others have no comparable experience because they have never been licensed by the FAA to operate a launch vehicle. However, none of the entities submitting comments has experience with regulatory requirements for reentry financial responsibility because commercial, or non-federal, reentry capability has yet to be presented to the FAA for formal licensing.

Accordingly, comments submitted included the following general observations for agency consideration and requests for guidance and clarification from the FAA.

Space Access requested clarification as to whether FAA licensing and insurance requirements, along with indemnification benefits of the CSLA, would apply to a developmental flight test short of an orbital or suborbital profile. Space Access noted the importance of understanding the regulatory and financial responsibility framework applicable to flight test activity because it is more hazards than launch and reentry of a proven vehicle.

For purposes of implementing its licensing authority under the CSLA, the FAA does not distinguish between a flight test for technology development purposes and commercial use of a proven, operational vehicle as long as the activity qualifies as launch of a launch vehicle or reentry of a reentry vehicle subject to licensing under the CSLA. However, operational restrictions would vary depending upon whether a vehicle is deemed proven or unproven. Experimental activities may be performed that would not qualify as launch or reentry of a launch or reentry vehicle, respectively, under the statute and FAA implementing regulations, and persons interested in performing such activities should consult the FAA to determine whether they must obtain a license. Financial responsibility requirements and allocation of risk under the CSLA would attach to any licensed launch or reentry, whether it is a flight test or operation of a proven vehicle, but would not apply to unlicensed vehicle operations.

ERPS asked whether the FAA plans to specify the conditions under which a licensee would be forced to accept a random reentry, such as that resulting from an abort while on orbit followed by natural reentry, and how the presence of crew or passengers would affect the determination. As a general matter, the FAA does not necessarily require random reentry in the event nominal reentry criteria cannot be accomplished or verified by the licensee. The FAA envisions that a non-nominal reentry may, depending upon the circumstances, pose less jeopardy to public safety than would a random reentry. For example, an applicant may demonstrate as part of its hazard identification and risk assessment that a non-nominal reentry would have a 500-mile footprint but that the footprint can accurately be targeted within the Pacific Ocean, thereby avoiding population. These variables would be evaluated and assessed as part of the licensing process in advance of an RLV mission or launch involving a reentry vehicle. Whether or not an aborted reentry that leaves an RLV in orbit or an otherwise random reentry would be required would depend upon the safety demonstration and risk mitigation measures developed by a licensee as part of its application. The FAA envisions that a designer or operator of a manned vehicle would provide procedures for safe return of crew and passengers under non-nominal conditions as part of its application, and demonstrate the adequacy of such procedures from a public safety and risk perspective, thereby eliminating random reentry as an option.

New Mexico requested that final rules governing reentry financial responsibility differentiate between ballistic reentry vehicles and RLVs. New Mexico pointed out that RLVs would be aerodynamically controllable and are therefore inherently more reliable and pose less risk of liability than would a ballistic type of reentry vehicle, such as COMET.

The NPRM relies upon the statutory definition of a reentry vehicle which includes certain RLVs, although the NPRM solicited comments on the appropriate commencement point of licensed activity for those reentry vehicles that are not RLVs. Vehicle reliability does not alter rules governing implementation of the CSLA financial responsibility and allocation of risk regime. It is a factor that would enter into the FAA's risk-based determination of the value of the maximum probable loss that may result to third parties and government property from licensed activities.

New Mexico further pointed out that the MPL methodology deemed by the FAA appropriate and adequate for a ballistic reentry vehicle, such as COMET, is outmoded and inadequate for controllable RLVs that can target a landing footprint comparable to a runway.

The FAA is charged by law with establishing liability and government property insurance requirements based upon an assessment of the probability of loss. The FAA intends to continue use of existing MPL methodology in order to address the risks posed by the full range of RLVs and other reentry vehicles that may be under development, as it currently does for innovative space launch concepts, such as airborne and platform-based launch systems. Ability of an operator to control an RLV during reentry is an additional factor that could affect an MPL determination.

Additional information on risk-based methodology for establishing insurance requirements is found in the supplementary information accompanying proposed rules governing financial responsibility for licensed launch activities, issued July 25, 1996 (61 FR 38992–39021), and issurance of final part 440 rules, issued August 26, 1998 (63 FR 45592–45625). Both documents are available from the FAA web site at http://ast.faa.gov.

Boeing requested that the FAA reconcile how it would implement financial responsibility requirements for reentry into a foreign jurisdiction with requirements imposed by that jurisdiction, and what rights and obligations the licensee may have in the process, if any.

Under the CSLA, a license is required for a U.S. citizen to launch a launch vehicle or reenter a reentry vehicle

outside the United States.[8] It directs the Department of Transportation (and by delegation the FAA) to establish financial responsibility requirements for each launch and reentry license issued by the agency. The CSLA addresses circumstances under which a U.S. entity seeks authorization to conduct its space transportation activity at a location that is outside U.S. territory, as Orbital Sciences did when it conducted its successful launch of the Pegasus XL vehicle system from Spain. Although a license issued by the FAA is required for a U.S. entity to conduct such activities abroad, a license does not convey the right to that entity to enter another sovereignty and conduct operations. For this reason, the FAA does not license, nor does the CSLA define ''launch'' to include, preparatory activities conducted at a launch site outside of the United States. The laws of a foreign sovereignty would apply to activities conducted within that territory. It is possible that overlapping or duplicative requirements would result where the United States and the foreign government providing a launch or reentry site share concurrent jurisdiction, as may be the case where a foreign government also requires insurance for space activities conducted from or directed at its territory, and the licensee would need to satisfy both governments' requirements. Where the requirement in question is to obtain liability insurance, satisfaction of differing requirements may best be accomplished by insuring to the highest required limit and naming both governments as additional insureds under the policy. More problematic would be the circumstance where technical safety requirements are inconsistent as a result of concurrent jurisdiction. Under those circumstances, liability of the two governments to reconcile requirements may impede a favorable licensing determination and foreclose the ability of the U.S. entity to use the foreign site. The FAA has not yet encountered this situation.

Boeing asked how the Outer Space Treaties enter the regulatory process for licensing and requiring financial responsibility for reentry. Though its licensing and regulatory program, the FAA implements national law, specifically the CSLA, which in turn was enacted with congressional recognition of certain treaty responsibilities undertaken by the United States. The regulatory process for implementing financial responsibility and risk allocation under the CSLA exists independently of the Outer Space Treaties, however.

In enacting the CSLA in 1984, Congress found that the United States should encourage private sector launches and associated services and, only to the extent necessary, ''regulate such launches and services in order to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property and national security interests and foreign policy interests of the United States.'' Pub. L. 98–575, 49 U.S.C. App. 2601. The accompanying *Report of the Senate Committee on Commerce, Science, and Transportation* (Report) reveals that Congress was aware of responsibilities accepted by the United States as a State Party to the Outer Space Treaty and, in particular, the Liability Convention and intended to fulfill certain of those responsibilities through domestic law. The Report explains that ''licensing requirements, as prescribed in section 6(a) [of Pub. L. No. 98–575] with respect to any activities outside the United States, provide, to the greatest extent possible, licensing coverage that is consistent with international law and the international convention on liability. In establishing these requirements, the Committee gave serious consideration to the extent of U.S. jurisdiction and the extent of U.S. liability for launch-related activities pursuant to international law and international obligations. Section 6(a), therefore, is intended to ensure comprehensive coverage of the licensing regime to the fullest extent permitted.'' S. Rep. No. 98–656, 9th Cong., 2d Sess. 9. Report language accompanying the 1988 amendments to the CSLA, which added the comprehensive financial responsibility risk allocation regime implemented under part 440 rules, further evidences commitments undertaken by the United States under the Outer Space Treaty and when the United States is a ''launching State'' under the terms of the Liability Convention. Report of the Committee on Science, Space, and Technology, H. Rep. No. 100–639, 100th Cong., 2d Sess. 12. Most recently, the 1998 amendments to the CSLA enacted by the Commercial Space Act of 1998, added reentry licensing authority to the CSLA along with associated financial responsibility and allocation of risk requirements. Although it does not refer specifically to U.S. obligations under the Outer Space Treaties, the associated Committee Report notes that amendments to chapter 701 of 49 U.S.C. Subtitle IX grants to the Secretary ''the authority and responsibility with respect to the licensing and regulation of the reentry of reentry vehicles as existing law provides to the Secretary with respect to the launch of vehicles.'' Committee Report at 21.

Boeing stated that the NPRM raises issues with respect to U.S. international commitments regarding on orbit activity. Boeing suggested that the definitions of ''launch,'' ''reentry'' and ''non-nominal reentry'' need to be expanded to include on orbit operations so that they are fully consistent with the liability provisions of the Outer Space Treaties. As previously mentioned, Boeing asked for clarification as to how the proposed reentry licensing regime, which excludes on orbit activities, fully satisfies international obligations of the United States under the Outer Space Treaties which, according to Boeing, ''appear to require supervision by the launching state of all activities conducted by non-governmental entities in outer space.''

The United States implements its treaty obligations through national law, including the CSLA. However, the FAA was not directed by Congress to license and regulate all on orbit activities of spacecraft. Rather, the CSLA, as recently amended, directs the Secretary to issue regulations carrying out the agency's licensing and safety mandate under the statute and to include licensing procedures for the conduct of a reentry. The FAA cannot, and does not, presume authority beyond that granted by Congress on the basis of treaty obligations. Accordingly, the Final RLV and reentry Licensing Regulations implement the agency's mandate under the CSLA to license and regulate launches of RLVs and reentry activities consistent with public health and safety and safety of property, as well as U.S. national security and foreign policy interests. The FAA further notes tht Boeing erroneously merges State Party responsibility under the Outer Space Treaty (Outer Space Treaty, Article VI) with liability assumed by a launching State under the Liability Convention.

Under the CSLA and FAA financial responsibility requirements, claims resulting from unlicensed activity on orbit remain the responsibility of the operator and participants in those activities. RLV operators, as well as other spacecraft owners and operators need to be aware of their responsibility and make informed business decisions regarding risk management. As noted in the NPRM and already stated in this supplementary information, the United States accepts fault-based liability as a launching State under the terms of the

[8] A U.S. citizen-controlled foreign entity requires a license under particular circumstances. *See* Final RLV and Reentry Licensing Regulations, 14 CFR 413.3(c).

Liability Convention for damage to another launching State's on orbit space object if the damage is due to the fault of the United States or the fault of persons for whom the United States is responsible. Liability Convention, Article III. However, where on orbit damage does not result from a licensed launch or reentry rendering the CSLA risk allocation regime inapplicable to cover third-party damage claims, the government may fulfill its treaty obligations and is not foreclosed from seeking compensation from those entities at fault for the damage.

The advent of RLVs means shared airspace between launch vehicles and aircraft and under the terms of the Liability Convention the United States also accepts absolute liability as a launching State for damage caused by its space object to aircraft in flight. Liability Convention, Article II. Accordingly, Boeing suggested that the FAA consider the potential impacts of its Concept of Operations in the National Airspace System in Year 2005 (CONOPS) on RLV financial responsibility and address collision avoidance in the final rule. Boeing identifies traffic, workload, environment, vehicle and mission profile, and airspace requirements as specific areas in the CONOPS affecting the NPRM.

The FAA is developing an integrated air and space traffic management concept designed to accommodate projected RLV, as well as ELV, traffic and safe use of shared airspace. For safety purposes, RLV mission and reentry licenses would require issuance of notices to airmen prior to initiating launch and reentry flight. The Final RLV and Reentry Licensing Regulations provide additonal detail concerning air and ocean traffic management requirements. From a risk management perspective, the probability of collison between a launch or reentry vehicle with aircraft would be extremely remote due to required notices to airmen and air traffic coordination. In all likelihood, the consequences of such a remote event would not affect directly the value of the FAA's MPL determination; however, if such events are found to be sufficiently probable as to warrant financial responsibility coverage they would be considered and assess under the methodology employed by the FAA.

Boeing also requested comment from the FAA as to how this rulemaking is intended to address financial responsibility for future space activities, such as commercial docking with the International Space Station, satellite refueling and servicing, and space tourism and debris management. Activities in space that are part of a licensed launch or reentry would be covered by FAA financial responsbility regulations. Financial responsbility and allocation of risk for activities that are not licensed by the FAA would be addressed by participants in those activities. The FAA acknowledges Boeing's forward thinking concerns and vision regarding an expanded commercial role in space transportation and utilization, and the important role risk management will play in fostering the viability of commercial on orbit services. For smiliar reasons, the FAA sought public comment on passenger liability and related matters.

Passenger Liability and Risk Management Considerations

Although risk management for space tourism is beyond the scope of this rulemaking the FAA has identified the need for passenger safety and liability regulations as part of a comprehensive regulatory program for RLVs. To assist FAA in thinking about and developing an appropriate regulatory framework for passenger-bearing space vehicles, the FAA solicited public comment on the following questions: Should passengers be regarded as any other customers who are expected to waive claims against other participants for injury, damage or loss as a result of launch or reentry? Should the government play a role in establishing limits on liability for injury to space vehicle passengers? Should indemnification be extended to cover risks of liability to passengers?

Thoughful comments were submitted to the docket by three entities. Space Access's concern over safety of the traveling public is reflected in its observation that passengers should be afforded the same protection in space flight that the public has come to expect from air travel and other forms of transportation. Consistent with its philosophy that airworthiness standards of the FAA may be appropriately and benefically applied to space vehicles, Space Accesss recommended using airworthiness standards for commercial transport category aircraft as the safety regulatory starting point for space flight involving carriage of passengers for hire. Space Access opposed treating passengers in a manner comparable to that of a satellite customer that can independently assess vehicle safety and reliability. Unlike a satellite customer, the traveling public relies upon government standards and regulation in selecting their preferred mode of transport.

In is response, Vela suggested using the adventure tour industry and air carrier liability as models, noting that passengers contract for travel services and therefore liability for their losses should not be regarded as a third party liability matter. Vela's observations are interesting but suggest an internally inconsistent approach inasmuch as certain air carriers are required by Department regulations to have a certain amount of insurance covering liability to passengers.

ERPS observed that its initial reaction was to treat passenger liability in space travel the same as air travel by relying upon such means as the Warsaw Convention, FAA regulations and other applicable laws and regulation. However, upon further reflection and consideration of the FAA's questions, ERPS recommended treating space vehicle passengers like other customers of launch and reentry vehicles by requiring that passengers carry their own insurance to cover their personal injuries, damage or loss. According to ERPS, applying principles of risk allocation whereby passengers travel essentially at their own risk, much like hold harmless arrangements subscribed to by participants in adventure tourism, reduces the threat of litigation and is more appropriate to an emerging, or ''embryonic'' industry. ERPS also suggested that unlike satellite customers of launch or reentry vehicles, passengers on a space vehicle should be required to purchase a minimum amount of personal insurance so that they are assured some amount of financial recovery in the event of a mishap. ERPS recommends using the cost of a human life utilized by the FAA in its MPL analysis, that is, $3 million. The cost of insurance would reflect the reliability of a space vehicle and therefore should be reduced with increased flight rates and experience. It would therefore appear from ERPS's comments that claims of passengers should not be covered by government indemnification.

The FAA will utilize this input and engage in further consideration of passenger safety and liability issues before proposing a regulatory program applicable to passenger travel, for hire, in space.

Section-by-Section Analysis and Discussion of Comments

Summarized below are specific comments addressing particular provisions of the proposed rule and the agency's response to comments. Changes to the regulatory text, other than those that may be considered nonsubstantive, are identified as well.

Section 450.1—Scope of part; Basis

Section 450.1 provides that the financial responsibility and allocation of

risk requirements of this rulemaking apply to licensed reentry activities. Licensees authorized to conduct orbital RLV missions must comply with part 440 requirements applicable to licensed launch activities and also part 450 requirements for licensed reentry. Because reentry activities described to the FAA in pre-application consultation involve vehicles still in conceptual stages or under development, the FAA considers it preferable to add reentry financial responsibility requirements in a new part 450, rather than combine them with existing requirements of part 440 and possibly complicate matters for other launch licenses. By limiting the scope of part 440 to licensed launch activities and adding a new part 450 covering reentry financial responsibility, the FAA intends to avoid potential confusion that may result from combined launch and reentry financial responsibility requirements. That said, the final rule codifies the proposed form of reciprocal waiver of claims agreement proposed in the NPRM for RLV missions, rather than a reentry vehicle, such as COMET or METEOR, launched as a payload and subsequently reentered, because it appears that reentry activities for the near term will involve RLVs. Also, in part 450, participants in a licensed launch associated with a particular reentry are identified and included in reentry financial responsibility requirements, where appropriate, to ensure that their interests in appropriate risk management are adequately covered.

Section 450.3—Definitions

Definitions of a number of terms appearing in § 440.3 also appear in § 450.3 without change. Although doing so may be duplicative, the FAA considers it desirable and more ''reader friendly'' to group in one part those terms requiring definition for reentry financial responsibility regulatory purposes, rather than cross-referencing another part. Where appropriate, the final rule incorporates conforming changes to definitions, as proposed in the NPRM, to cover reentry activities instead of launch activities. Comments on proposed definitions are summarized below.

Consistent with § 440.3, the term ''contractors and subcontractors'' is defined in terms of the nature of involvement of an entity in licensed activity, rather than by a description or other classification of the entity. New Mexico recommended specifically adding ''reentry site operator'' to the definition of ''contractors and subcontractors'' to ensure it receives the same treatment as would a Federal launch range. The FAA does not adopt New Mexico's recommendation in the final rule out of concern that listing covered entities in the definition may suggest that any entity not included is therefore excluded. Based on more than ten years of experience in implementing comparable requirements for launch financial responsibility, the FAA considers it preferable to provide a definition that is sufficiently broad as to encompass those entities entitled to coverage under required insurance and that are expected to accede to and reap the benefits of the reciprocal waiver of claims agreements required by the CSLA than to list classes of covered entities.

Vela commented that the definition of ''hazardous operations'' proposed in § 450.3 is overly broad in that anything can potentially cause injury or damage. The term ''hazardous operations'' appears in Appendix A to the final rule and in Appendix A to part 440, both of which list information requirements for obtaining an MPL determination. In using the term, the FAA intends to gain information regarding hazards and risk to third parties, their property and to Government personnel and property in order to make an MPL determination. When read in context, the term ''hazardous operations'' appropriately identifies activities that may cause injury or damage to persons or property and the FAA would then classify persons and property exposed to risk as first party, third party or government. Doing so is necessary element in rendering an MPL determination. Accordingly, the definition of ''hazardous operations'' remains unchanged in the final rule.

New Mexico recommended adding definitions of the terms ''licensed launch activity'' and ''persons.'' The term ''licensed launch activities'' is defined in part 440 and, because it appears in part 450, that definition is added to § 450.3. The definition is the same as that appearing in § 440.3(a)(10), as follows: ''licensed launch activities means the launch of a launch vehicle as defined in a regulation or license issued by the Office and carried out pursuant to a launch license.'' The term ''persons'' need not be separately defined in part 450 because it is defined in § 401.5 of the Commercial Space Transportation Licensing Regulations. Section 450.3 provides that, unless otherwise stated, there is no change to the definitions of terms appearing in part 450 from those appearing in the statute or § 401.5 of the Commercial Space Transportation Licensing Regulations.

Boeing recommended a revised definition of ''payload,'' a term defined in § 401.5 of the Commercial Space Transportation Licensing Regulations, as a means of extending FAA licensing authority to on orbit operation of certain RLVs. The FAA does not accept Boeing's recommendation, as previously explained.

Definitions of other terms appearing in § 450.3 remain unchanged in the final rule.

Section 450.5—General

Section 450.5(a) of the final rule establishes that compliance with part 450 requirements is a prerequisite to the conduct of a licensed reentry. Because compliance with part 450 must be demonstrated to the FAA's satisfaction in advance of a licensed launch involving a reentry under the terms of § 450.15(a)(2)—''Demonstration of compliance,'' § 450.5(a) effectively precludes commencement of licensed launch activities involving a reentry license until compliance with part 440, where applicable, has also been demonstrated.

Under § 450.5(b), the FAA retains its current practice of prescribing required amounts of insurance or other form of financial responsibility in a license order. Required amounts of insurance may be modified by order of the FAA. Where a multi-year operator license has been issued, the agency requires flexibility to modify requirements when it learns of changes in property (amount and value) and numbers of third parties exposed to risk whose claims are intended to be covered by required insurance, or where a license is amended by authorizing new mission profiles. The FAA reaffirms that, as a general matter, changes in requirements would be issued before licensed activity begins. The FAA does not envision changes in reentry insurance requirements after a reentry vehicle has been launched but before it reenters. The agency understands that obtaining additional coverage at that point may be difficult or extremely costly to obtain where, for example, a non-nominal situation occurs. The methodology used by the FAA in determining MPL in advance of licensed activities is intended to evaluate reasonably foreseeable and sufficiently probable non-nominal events and assess their consequences.[9] Therefore, it is highly unlikely that insurance requirements would be changed by the FAA in the midst of an RLV mission to address

[9] As reflected in § 450.11 of the final rule, the risk analysis used to determine MPL will also dictate the required duration of insurance coverage where reentry is aborted and the reentry vehicle will remain on orbit until its natural entry into Earth atmosphere.

anomalous circumstances. It is conceivable, however, that requirements would change where a licensee proposes to alter the mission profile authorized by the license after the mission has begun.

Section 450.5(c) establishes the fundamental principle that a reentry licensee remains responsible for liability, loss or damage sustained by the United States resulting from licensed reentry activities except where: (1) Liability, loss or damage sustained by the United States results from willful misconduct by the United States or its agents; (2) covered third-party claims exceed the amount of required insurance and do not exceed $1.5 billion (as adjusted for post-January 1, 1989 inflation) above that amount and are payable under 49 U.S.C. 70113 and part 450; (3) loss or damage to government property covered by insurance under § 450.9(e) exceeds the required amount of coverage and does not result from willful misconduct of the licensee; and (4) in the event the licensee has no legal liability for claims that exceed required insurance under § 450.9(c) plus $1.5 billion (as adjusted for post-January 1, 1989 inflation).

The FAA may suspend or revoke a license, and impose civil penalties, where a licensee fails to comply with part 450 requirements, as reflected in § 450.5(d) of the final rule.

Section 450.7—Determination of Maximum Probable Loss

The regulatory approach to establishing required amounts of reentry financial responsibility includes the FAA's risk assessment methodology, known as maximum probable loss or MPL. MPL is a risk-based analysis that yields the greatest potential losses, measured in dollars, for bodily injury and property damage that can reasonably be expected to occur as a result of licensed launch or reentry activities. MPL measures probabilities, not possibilities, against a specified yardstick or threshold point, to identify events that are sufficiently probable as to warrant financial responsibility to cover their consequences. Insurance requirements are established at a level that provides financial protection against the consequences of events that are deemed sufficiently probable under the regulations. (*See* 14 CFR 450.3—''maximum probable loss'' for the regulatory definition of MPL and associated threshold probabilities of occurrence.) Under the final rule, the FAA uses the same threshold probabilities of occurrence in establishing reentry financial responsibility as it currently does for launch financial responsibility. With a limited exception for claims of Government personnel, for required liability insurance, there is about a one in ten million chance that third party claims will exceed the amount of insurance mandated by the FAA. For government property loss or damage, there is about a one in one hundred thousand chance that damage to covered government property will exceed required insurance. The notice of proposed rulemaking associated with part 440 contains a detailed discussion of MPL methodology as applied to third party liability and government property insurance requirements for licensed launch activities and the NPRM referred the interested public to that discussion. (*See* 61 FR 38992, at 39004–39007, issued July 25, 1996.) Generally, the same principles would apply in assessing reentry risk and establishing MPL values for the conduct of licensed reentry activities. Section 450.7(a) of the final rule provides that MPL values form the basis for insurance requirements (up to statutory ceilings on those requirements) issued by the FAA in a license order.

Section 450.7(b) reflects the statutory 90-day requirement for issuance of an MPL but makes provision for possible delay due to required interagency coordination. The FAA will keep the licensee informed of delays in issuing an MPL determination. The 90-day period is measured from the point at which all information required of the licensee to make a determination has been submitted. Space Access commented that 90 days is too long a time to wait for an MPL determination for a quick turnaround mission using a previously flown vehicle and payload. The concerns registered by Space Access resemble those of Kistler in response to a comparable 90-day requirement in part 440. As in the part 440 rulemaking, the FAA reiterates that it will retain its longstanding practice of applying an established MPL value to missions falling within specified parameters, rather than performing a new MPL determination for each flight. This practice would accommodate quick turnaround missions performed on short notice as long as mission parameters were previously considered under the FAA's MPL methodology. A change in mission profile, such as use of a reentry site, hazardous material, changed trajectory and payload, if any, to one not assessed as part of the MPL determination process may affect required amounts of financial responsibility. Under those circumstances, a reentry licensee should allow time for reconsideration of the MPL value in scheduling a mission.

Section 450.7(c) provides that information required for obtaining an MPL determination for licensed reentry activities are located in Appendix A to part 450. Information previously submitted to the FAA in support of a prior MPL determination may be identified and certified by a licensee as accurate and applicable to its current MPL request.

Space Access requested additional guidance in understanding certain information requirements, such as identification of the impact dispersion area, and methodology for measuring debris casualty areas. In the Final RLV and Reentry Licensing Regulations, the FAA provides greater clarity regarding the three-sigma landing or impact dispersion area that must be identified by a reentry license applicant. The FAA continues to develop additional guidance materials regarding MPL methodology, and will make them available to the public upon their completion.

Section 450.7(d) reflects the discretion, reserved by the FAA, to amend an MPL determination before licensed reentry activities have been completed. As noted above, the FAA requires discretion to revise insurance requirements under appropriate circumstances, such as when changes in property and persons exposed to risk warrant a change. The FAA would not alter requirements mid-flight but might do so at some point during the term of an operator license or before all missions authorized by a license have been accomplished. Changed financial responsibility requirements due to a revised MPL determination are issued in a license order further amending a license.

Consistent with current practice for launch MPL, anyone may request an advisory reentry MPL determination and the FAA will endeavor to accommodate such requests. However, where a requested MPL determination is not associated with a particular license or license application and is therefore advisory in nature, the FAA is not limited to the 90-day timeframe dictated by the CSLA and reflected in § 450.7(b). Section 450.7(e) of this final rule addresses the timing of advisory MPL determinations.

Section 450.9—Insurance Requirements for Licensed Reentry Activities

Section 450.9 of the final rule identifies the two types of insurance a reentry licensee may be required to obtain as a condition of a reentry license. They are liability insurance for

covered loss or damage claims of third parties and property insurance in the event Federal range property or assets are exposed to risk as a result of an authorized reentry.[10] A licensee that does not obtain insurance must otherwise demonstrate financial responsibility.

Section 450.9(b) identifies those entities and persons that must be protected by required liability insurance as additional insureds. The CSLA financial responsibility regime is intended, in part, to relieve all of the various participants in a licensed launch or reentry from the burden and expense of obtaining separate liability insurance and the drain on insurance capacity that would result if each such entity had to provide for its own coverage. The FAA envisions that a reentry accident resulting in third party liability could involve participants in the launch preceding reentry activity and that they, too, require protection from third party liability associated with licensed reentry activities. Accordingly, to ensure comprehensive coverage as intended by statutory requirements, § 450.9(b) also identifies the various entities, and the employees of each, involved in licensed launch activities associated with a particular reentry as persons who must be additional insureds under the liability policy.

Section 450.9(c) provides that the FAA prescribes the amount of liability insurance a reentry licensee must obtain to respond to covered third-party claims. Covered third-party claims include claims for damage or loss to property belonging to the United States, its agencies and its contractors and subcontractors that is not covered by required government property insurance. This requirement clarifies that government assets, as well as government contractor assets, located off a Federal launch range are treated the same as other third party property for insurance and liability purposes and the government does not waive claims for damage or loss to such property. Covered third-party claims include claims of Government personnel, a defined term under § 450.3 that means employees of the United States, its agencies, and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry.

[10] An RLV mission licensee would also be required to comply with part 440 and must obtain liability and government property insurance for licensed launch activities as well as licensed reentry activities.

As dictated by the CSLA, the amount of liability insurance that may be required of a licensee is capped at $500 million or the maximum available on the world market at a reasonable cost. Space Access asked whether the ''reasonable cost'' standard would be applied to all applicants on a uniform basis, an approach favored by Space Access, or on a case-by-case basis. The FAA reserves discretion to assess the latter ceiling on insurance. Case-by-case consideration could, theoretically, include such factors as prevailing market conditions or vehicle reliability (to the extent it may affect insurance premiums). The FAA has yet to address, in a formal way, a circumstance under which a licensee is unable to obtain the required amount of liability insurance because its cost was prohibitively high. However, a person who cannot afford insurance probably cannot afford to cover his or her resultant liability. As a general matter, the FAA believes that use of risk mitigation measures provides an appropriate means of limiting insurance cost to an applicant or licensee, rather than a complete shifting of liability risk to the government. Unusually high MPL values and associated insurance costs may signal that a reentry proposal poses unusually great risk to public safety such that it ought not be authorized by an FAA license absent additional risk mitigation measures.

Although license requirements may be waived on occasion, the legislative history accompanying the 1988 Amendments to the CSLA notes that the Department of Transportation should ''exercise caution'' in granting licenses where MPL will not be fully compensated by insurance or other financial protections obtained by the licensee. S. Rep. No. 100–593, 100th Cong., 2d Sess. 11 (1988). At a time when insurance capacity was insufficient to satisfy demand, the Committee Report accompanying passage of the 1988 Amendments acknowledged circumstances under which inadequate demonstration of financial responsibility may be tolerated by the Department. Those circumstances were based upon Air Force control over launch operations, including control over flight termination decisions, as well as the absence of third party damage claims from launch operations in the United States. Thus, risk to third parties was managed and controlled by use of proven safety procedures and experienced personnel. It further noted that a license should only be granted in the absence of adequate insurance where all available insurance sources have been exhausted, including a reasonable amount of self-insurance. *Id.* at 10–11.

The FAA reiterates that MPL, and possibly premium cost, may be reduced through operating plans that limit risk to third parties. For example, use of an inland launch and reentry site for an RLV may expose third party persons and property to risk, whereas launch and reentry at a coastal site may significantly reduce such risks. The FAA understands that cost is relative and that premiums affordable for a large corporation may be daunting to a small, entrepreneurial entity. That said, statutory risk allocation provisions are premised upon the notion of shared risk, such that a person who exposes third parties to injury, damage or loss as a result of launch or reentry activities that by their nature are inherently hazardous is expected to cover resultant liability up to a specified level before the government may be called upon to assume responsibility.

Section 450.9(d) provides that the FAA prescribes the amount of insurance required of a reentry licensee to cover damage or loss to government property as a condition of a reentry license. Property covered by required insurance is that belonging to the government and its agencies, and also property of government contractors and subcontractors that support licensed reentry activities when that property is located on a Federal range facility. Unrelated property of a government contractor that is located off the Federal range would be regarded for insurance purposes the same as third party property because its risk exposure is no different than that of any other third party property and the government assumes no greater risk of its damage or loss than that afforded to other such property.

Comments submitted on behalf of New Mexico expressed general support for risk allocation provisions under the CSLA and proposed in the NPRM but noted that certain provisions of the rule would apply only to Federal government ranges and not to commercial sites that are not located on Federal government reservations. New Mexico requested that the FAA revise the rules to exclude non-federal launch sites from requirements when those requirements would be inapplicable. The FAA agrees that certain requirements contained in part 450 are specific to use of Federal property and involvement of Government personnel in the conduct of licensed reentry activities but does not agree that it is necessary to exclude non-federal sites from particular sections of the rule.

Section 450.9(d) provides a useful example of a requirement specific to involvement of Federal range facilities and assets in the conduct of licensed reentry activities. Consistent with current practice for licensed launches, the FAA would not impose requirements under § 450.9(d) where no such property is utilized. The FAA does not find it necessary to revise the final rule text to exclude non-federal sites from inapplicable requirements.

Section 450.9(e) reflects the statutory limit on government property insurance requirements. As for licensed launches, insurance is capped at $100 million and the government waives claims for damage or loss to Federal launch range property to the extent damage or loss exceeds required insurance. Property belonging to government contractors and subcontractors involved in licensed reentry activities is also covered by government property insurance and the government waives excess claims for such property as well. An elaborate discussion of risk allocation affecting government contractors and subcontractors appears in the supplementary information accompanying issuance of part 440. (*See* 63 FR 45592–45626, August 26, 1998.) The discussion is not repeated in this rulemaking because the same principles apply. The document may be accessed from the following web site: http://ast.faa.gov.

Financial responsibility is generally demonstrated through insurance policies obtained by a licensee. Other forms of financial responsibility may be utilized by a licensee, as reflected in § 450.9(f), as long as they satisfy the terms and conditions of coverage required under part 450.

Section 450.11—Duration of Coverage; Modifications

As in licensed launch activities, a different term of required insurance coverage is specified for ground operations than for flight. Under § 450.11(a), insurance coverage attaches upon commencement of licensed reentry activities and for ground operations remains in effect through completion of licensed activities at the reentry site.

Reentry flight insurance must address anomalous situations that result from planned reentries. Anomalous situations may arise during licensed activities that precede descent flight, such as premature reentry flight commencing during the conduct of licensed, or covered, reentry readiness operations. They may also arise after descent flight has been initiated and, depending upon the vehicle, the extent of operator control and vehicle maneuverability, may or may not be addressed through contingency plans and procedures of the licensee, such as reentry to a contingency abort location. They may also result in aborted descent flight of the vehicle, where abort on orbit is indicated. Anomalous reentry scenarios that are reasonably foreseeable are considered by the FAA under its MPL assessment methodology. Where reentry or descent flight is initiated, the FAA has determined that it is appropriate to require insurance to cover claims for a period of 30 days following the reentry attempt. Thirty days was proposed because, as for launch, the FAA believes 30 days provides an appropriate length of time to require coverage for the consequences of a reentry attempt. However, unlike launch, a reentry abort situation could result in leaving a vehicle on orbit with the understanding that it would eventually reenter through natural forces and possibly cause damage on the surface of the Earth. Where that situation occurs, the FAA proposed, and now makes final, application of an event test under which the FAA would examine the consequences of random reentry due to an abort on orbit and require insurance until such time, determined through MPL analysis, that risk to third parties and Government property as a result of essentially random or natural reentry due to orbital mechanics and drag forces is sufficiently small that financial responsibility for its consequences is no longer necessary. The required duration of insurance, should abort on orbit be necessary under the terms of the license or at the licensee's election, would be established as a license condition issued in advance of the launch of the reentry vehicle. The FAA does not intend to impose indefinite insurance requirements on a licensee after a vehicle has been launched and it is subsequently discovered that a reentry vehicle cannot be reentered to Earth as intended. As explained in the NPRM, the FAA's risk-based approach to insurance duration for licensed reentry is appropriate in light of the liability accepted by the United States for damage on the ground or to aircraft in flight when it is a launching State under the terms of the Liability Convention.

Space Access observed that insurance requirements imposed upon reentry or descent flight may overlap with subsequent launch and reentry financial responsibility where a single vehicle will perform a licensed reentry and is intended to be launched again within 30 days of initiation of reentry flight. Under such circumstances, there should be no difficulty in determining where claims result from the subsequent licensed launch or the prior licensed reentry. Moreover, launch and reentry insurance requirements for ground operations involving a launch vehicle will be distinct and the FAA does not envision either compliance difficulties or conflicts as a result of requirements to maintain insurance in accordance with timeframes proposed in the NPRM.

Section 450.11(b) echoes the restriction on changes to insurance coverage and expiration currently imposed on launch licensees.

Section 450.13—Standard Conditions of Insurance Coverage

Conditions of insurance coverage for licensed reentry activities are the same as those for licensed launch activities; however, the prospect of multiple occurrences and occurrences during launch as well as reentry, particularly where an RLV is involved, raises unique issues for ensuring adequate coverage is maintained by a licensee.

Limits of insurance apply separately to launch and reentry of an RLV. Although limits imposed by the FAA may appear uniform for launch and reentry, policy limits must be available to cover occurrences during both flight phases. The fact that two authorizations or licenses, for launch and reentry, are combined in a single document does not mean that all licensed activities are subject to a single limit of liability coverage. Rather, insurance must be available up to prescribed amounts for launch of a launch vehicle and available up to prescribed amounts for reentry of a reentry vehicle, even where the same vehicle is employed for both launch and reentry. Likewise, an operator of such a vehicle would be eligible for indemnification where claims exceeding required amounts of liability insurance result from launch and then again from reentry of the vehicle. For some multi-stage vehicles, it is foreseeable that a catastrophic failure or accident involving one stage of the vehicle would not preclude its subsequent reentry. The operation of the vehicle could therefore be eligible for government risk-sharing under the CSLA, including indemnification, twice in one mission. Section 450.13(a)(2) states that policy limits must apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed reentry activities for a particular reentry. The requirement is stated in this fashion because a license may authorize multiple missions, each of which must be insured up to the required amount.

Section 450.13(a)(8), as proposed, would require that policies of insurance

be placed with insurers licensed to do business in any State, territory or possession of the United States or the District of Columbia. As indicated in an FAA Advisory Circular relating to a similar requirement in 14 CFR 440.13(a)(8), compliance is demonstrated if policies of insurance contain a service of suit clause in which the insurer agrees to submit to the jurisdiction of a court of competent jurisdiction within the United States and designates an authorized agent in the United States for service of legal process on the insurer. Paragraph (a)(8) of § 450.13 reflects that compliance with the licensing requirement is similarly demonstrated through a service of suit clause. The International Underwriting Association of London (IUA) suggested that paragraph (a)(8) be phrased in the alternative to make it clear that *either* state licensure *or* a service of suit clause satisfies the regulatory requirement. The FAA does not object to rephrasing the requirement in the alternative but does not agree that it is necessary given the plain meaning of the section. Nevertheless, the FAA makes the requested change to the regulatory text and may make a comparable change to 14 CFR 440.13(a)(8) to avoid any confusion that different standards of compliance apply.

Section 450.15—Demonstration of Compliance

Under § 450.15, a reentry licensee must demonstrate compliance with part 450 requirements in a manner comparable to that required of licensees under part 440. Licensees need not be concerned with duplicative paperwork burdens by virtue of having to supply and demonstrate launch and reentry financial responsibility for an RLV mission. A single, comprehensive demonstration of compliance with part 440 and 450 will satisfy requirements of both parts. Demonstration of compliance must be completed in advance of the licensed launch involving the reentry vehicle.

In similar fashion to demonstrating launch financial responsibility, a reentry licensee must supply the following to the FAA within the timeframes specified in the rule: the reciprocal waiver of claims agreement(s) required under § 450.17, certificates of insurance of evidence of another form of financial responsibility and renewals of coverage as appropriate, certification by the licensee of compliance, a listing of exclusions from insurance coverage and a certification that the exclusions may be deemed usual in the event the licensee will seek coverage by the government of the excluded risks, and an opinion of the licensee's insurance broker that the insurance coverage provided complies with FAA requirements. A licensee must make policies of insurance and related documents required under this part available for FAA inspection, as provided in § 450.15(f).

Section 450.17—Reciprocal Waiver of Claims Requirements

Reciprocal waivers of claims are essential to the CSLA risk allocation regime. Participants in licensed reentry activities are required to enter into reciprocal waiver agreements comparable to those used for licensed launch activities. Under the agreement, participants waive claims for damage or loss to their property that result from licensed activity and further agree to be responsible for damage or loss to their property sustained as a result of the activity. Each participant is thereby foreclosed, or estopped, from asserting claims against the other participants and each is relieved of the threat and cost of inter-party litigation. The reciprocal waiver scheme therefore reduces the cost and need for liability insurance to cover certain claims among the participants. The government's property damage waiver is limited by statute to damage or loss in excess of required government property insurance and also covers property damage or loss sustained by government contractors and subcontractors involved in licensed reentry activities at a Federal range facility that is the reentry site.

Except for the U.S. Government, as explained below, each participant in licensed reentry activities also agrees to be responsible for personal injury, property damage or loss suffered by its own employees as a result of licensed reentry activities. Although employees of participants in reentry activities are third parties within the statutory and regulatory definitions of the term, their claims are not intended to be covered by required liability insurance and MPL determinations do not assess risk to those employees. Claims of employees, other than Government personnel, are the responsibility of their employer under the reciprocal agreements required by § 450.17 of the final rule. In essence, the obligation of each participant under the reciprocal waiver of claims agreement to be responsible for its employees losses amounts to a contractual obligation to indemnify and hold harmless the other participants in the event one's employee suffers losses and seeks recovery or damage from another participant. The FAA has made this contractual indemnification and hold harmless undertaking explicit in part 440 with respect to licensed launch activities and now does so for reentry in this final rule.

The U.S. government accepts different responsibilities under the reciprocal waiver of claims agreement from that accepted by PPLPs and PPRPs because of limitations arising out of appropriations laws on its ability to accept an unfunded contingent liability. Claims of Government personnel, defined as employees of the government and of its contractors and subcontractors involved in the licensed reentry activities (or licensed launch activities associated with a particular reentry) would be covered by the licensee's liability policy as third-party claims and become the responsibility of the government to the extent third-party claims exceed required insurance. A detailed discussion of the rights and responsibilities of the various signatories to a reciprocal waiver of claims agreement under the CSLA appears in the supplementary information accompanying issuance of part 440 (*see* 63 FR 45592–45626, August 26, 1998), and may be accessed from the following web site: http// ast.faa.gov.

The form of reciprocal waiver of claims agreement codified in this final rule covers claims regardless of fault but does not replace contractual rights and remedies negotiated by the parties in good faith and for consideration, such as re-flight guarantees or replacement missions. Fault-based claims, including gross negligence, are waived under the terms of the agreement. The only exception is a claim for willful misconduct by a participant.

The FAA proposed and now codifies in Appendix B to part 450 a comprehensive reciprocal waiver of claims agreement designed to accommodate reentry activities for the foreseeable future. Based upon industry proposals described to the FAA informally or in pre-application consultation, it appears that all reentry activity currently under design involves an RLV. Accordingly, the FAA developed the form of agreement required by § 450.17(c), and that appears at Appendix B, to address RLV missions involving the U.S. Government, its agencies or personnel.[11] The agreement refers to claims resulting from unspecified ''Licensed Activities,'' rather than licensed launch or reentry activities. In this manner, participants in either phase of licensed activity for

[11] Where the U.S. Government, its agencies or personnel are not involved, § 450.17(b) directs participants in a licensed reentry to execute reciprocal waivers of claims.

an RLV are included within the scope of a single, comprehensive agreement. The FAA believes it desirable to include participants at either end of a mission as signatories to the agreement because any of them may confront claims from other participants that result from activities conducted at the other end of licensed RLV activity. For example, participants in a licensed reentry may suffer damage or loss to their property, and their employees may suffer injury, damage or loss, through involvement in the licensed launch campaign preceding placement of the vehicle and its payload, if any, in Earth orbit or outer space. To achieve the intended result of limiting inter-party litigation, it is desirable to include all such participants in a single agreement. There may be instances under which a licensed reentry occurs sufficiently independent of the launch that placed the reentry vehicle in orbit as to warrant a separate reciprocal waiver of claims agreement among launch participants and another one among reentry participants. The FAA will address those circumstances on an individual basis.

As under part 440, the form of reciprocal waiver of claims agreement required under part 450, § 450.17(d), identifies as signatories to the agreement the licensee, its customer and the FAA on behalf of the U.S. Government. Where multiple customers are involved in licensed activities, each would be required to execute the agreement and to waive claims as between themselves. Under the agreement, each party agrees to flow down, or pass on, to its contractors and subcontractors the obligations each undertakes to waive claims and assume responsibility for employee losses. In this manner, the FAA intends to ease paperwork burdens and simplify implementation of the waiver requirement. Section 450.17(d) of the final rule provides relief to parties that suffer claims by another party's contractors or subcontractors due to failure by that party to implement properly the flow down obligation. The participants in licensed activities that are required to accede to the reciprocal waiver of claims scheme are those that have their personnel or property at risk in the conduct of licensed activities and those who may make claims against other participants for loss or damage sustained by personnel or to property as a result of licensed activities. Failure to comply may subject a participant in licensed launch or reentry activities to enforcement proceedings by the FAA under the CSLA.

New Mexico, a prospective launch and reentry site operator, submitted comments regarding risk allocation between a site operator and its customers. Under parts 440 and 450, ''customers'' of a site operator would include launch and reentry licensees, such as RLV operators. Customers of a site operator may also be entities providing launch and reentry services to other entities at the site and that utilize facilities offered by the site operator. New Mexico commented that commercial site operators should be treated the same as government (Federal) site operators for purposes of the reciprocal waiver of claims agreement. To assure comparable treatment is afforded to commercial site operators, New Mexico suggested that the term ''contractors and subcontractors'' be defined to specifically include a reentry site operator, as discussed above under the discussion of § 450.3, and that the reciprocal waiver of claims agreement be modified to specifically state that the Licensee waives and releases claims it may have against its Contractors, as well as its Customers and the United States. Although the CSLA directs that parties enter into waiver of claims agreements with their contractors and subcontractors, agency practice has been to allow those entities to carry out the CSLA requirement as a contractual, rather than regulatory, matter. As a regulatory matter, the FAA focuses on entities that are not otherwise in contractual privity with a licensee or customer to ensure they obtain the benefits of the waiver of claims arrangement. Accordingly, the form of agreement currently in use under part 440, Appendix B, does not specifically address a waiver between a licensee and its contractors, or a customer and its contractors, and similarly, the proposed form of agreement in the NPRM did not do so.

It appears from New Mexico's comments that it wishes to be protected by insurance or other means of financial responsibility required of the launch or reentry licensee in the event of third-party claims against the site operator arising out of the licensed launch or reentry. A licensed site operator obtains the benefits of coverage provided by the launch or reentry licensee because it is a contractor to that licensee. However, as a contractor to the launch or reentry licensee, the site operator is also expected to accede to the reciprocal waiver of claims agreement.

New Mexico desires treatment of commercial site operators that is comparable to that afforded the U.S. Government as Federal launch range provider; however, the U.S. Government's waiver of claims is limited to claims that are in excess of required government property insurance. In other words, the government's waiver is more limited than that of private party launch or reentry participants (PPLPs or PPRPs). Whereas the government obtains the benefits of required insurance up to the statutory ceiling of $100 million, as determined through MPL analysis, PPLPs and PPRPs are expected to waive claims from the first dollar of loss. While New Mexico asserts that it wishes to ensure its participation in the waiver scheme, it further comments that when launch takes place at a commercial, rather than Federal government-owned site, licensed launch activities should commence upon launch vehicle ignition in order to limit CSLA financial responsibility reqirements to vehicle flight. New Mexico understands that commercial ELV operators desire coverage for pre-flight hazardous operations under the CSLA financial responsibility and allocation of risk regime because high value government range assets are at risk and ELV operators have felt the need to share in the risk to such property. However, at a commercial site, the notion of including pre-flight operations within the reach of the CSLA insurance and reciprocal waiver scheme limits flexibility in commercial arrangements between the site operator and the vehicle operator and is not necessary, according to New Mexico. New Mexico offered that flight is the one portion of operations for which CSLA financial responsibility is necessary for all operators. Taken together, it would appear that New Mexico advocates participation by commercial site operators in the insurance and reciprocal waiver of claims requirements of the CSLA during vehicle flight only but would otherwise prefer private insurance and risk arrangements between the site operator and vehicle operator.

Hazards to third parties and risks posed by launch activities, including pre-flight operations, may exist whether launch occurs at a Federal launch site or a commercial site. The FAA has defined launch to include pre-flight operations because of their hazardous nature and not merely because Federal range assets are exposed to risk. For regulatory purposes, the FAA does not utilize a different definition of ''launch'' depending upon whether the launch site is commercially or Federally operated. As long as the launch site is located in the United States, a consistent definition of launch applies. Launches outside of the United States are regulated commencing upon ignition in

deference to the local sovereignty. Thus, a licensed launch or reentry site operator would be deemed a contractor to the licensee for all financial responsibility and risk allocation purposes and is expected to waive claims for damage or loss it suffers as a result of licensed launch and reentry activities at its site. That said, the FAA does not interfere with the conditions of use imposed by a licensed site operator on its customers through private contractual arrangements.

Boeing raises concerns stemming from uncertainties it perceives in identifying when licensed reentry activities begin and statutory reciprocal waivers of claims apply. Uncertainty would be resolved upon issuance of this final rule and in license orders addressing specific reentry proposals. Boeing believes that on orbit activities of an RLV require licensing and application of the CSLA financial responsibility and risk allocation regime. On orbit operation of RLVs will be inherently hazardous, according to Boeing, and therefore it is commercially desirable, if not critical, that participants in on orbit activities waive claims for damage or loss against other participants. Absent a legal requirement to do so, Boeing believes it will be difficult at best to convince customers and other participants to enter into a reciprocal waiver scheme and questions whether independent agreements covering unlicensed activities provide an adequate contractual, legal and insurance scheme for participants.

The FAA lacks authority to require insurance and reciprocal waivers of claims for unlicensed activities. This situation exists currently for activities involving expendable launch vehicles and payloads when those activities are not covered by an FAA license. Participants in licensed launches may address unlicensed activities and their attendant risks through private contractual arrangements. The FAA understands that the void, or gap, in licensing coverage must be addressed privately through commercial arrangements and that it may affect the ability of vehicle operators to attract customers and participants in the performance of risky business on orbit. However, the FAA is unable to fill the resultant void or gap absent statutory authority to do so. That said, participants in licensed launch and reentry activities should bear in mind that certain claims that *result from* licensed activity are intended to be covered by statutory requirements for risk allocation, as discussed earlier in this supplementary information

Section 450.19—United States Payment of Excess Third Party Liability Claims

Section 450.19 reflects the commitment of the U.S. Government to accept responsibility for satisfying successful third party claims against reentry and associated launch participants (PPRPs and PPLPs) to the extent covered claims arising out of a reentry exceed required insurance, up to a statutory ceiling of $1.5 billion (as adjusted for post-January 1, 1989 inflation) above insurance, absent willful misconduct by the entity on whose behalf payment of such claims is sought. It also contains procedures applicable to payment of excess claims. This risk-sharing feature of the CSLA is subject to a statutory sunset provision. Unless further extended, it would be available only for licensed activities conducted under a license for which a substantially complete application was submitted on or before December 31, 2000.

In the NPRM, the FAA further explained how the extent of licensing coverage described in the Proposed RLV and Reentry Licensing Regulations would affect launch and reentry risk management, particularly in light of the relationship that must exist between licensed activity and its consequences for purposes of indemnification eligibility.

CSLA financial responsibility and risk allocation requirements are co-extensive with licensed activity and also address the direct results, or consequences, of licensed activity. Under the CSLA, financial responsibility must compensate the maximum probable loss from claims by a third party and the U.S. Government of injury, damage or loss ''resulting from an activity carried out under the license;* * *'' 49 U.S.C. 70112(a)(1)(A) and (B). Similarly, reciprocal waivers of claims mandated by the CSLA require each party to the waiver to be responsible for damage or loss it sustains and injury, damage or loss sustained by one's employees, resulting from an activity carried out under the applicable license.'' 49 U.S.C. 70112(b)(1). Likewise, the government payment of excess claims provisions, known as indemnification, apply to successful claims of a third party against a launch participant ''resulting from an activity carried out under the license* * * for death, bodily injury, or property damage or loss resulting from an activity carried out under the license.'' 49 U.S.C. 70113(a)(1). Applying plain language principles of statutory construction, the phrase ''as a result of '' can be read to mean ''caused by.'' *See, e.g., Black Hills Aviation, Inc.* v. *United States,* 34 F.3d968(10th Cir. 1994).

In issuing part 440 final rules governing financial responsibility for licensed launch activities, the FAA stated that determining eligibility for payment of excess claims is necessarily a fact-based inquiry and would depend on the particular circumstances giving rise to the claim. 63 FR at 45612. The same is also true for reentry indemnification, particularly in light of Committee Report language stating that the provisions set forth in 49 U.S.C. sections 70112 and 70113 ''apply to losses sustained *as a result of* licensed activities, (i.e., launches and reentries) not events or activities between launch and reentry; after reentry; or uncovered before launch. Once a launch or a reentry is completed no protection against third party liability is intended to be provided under Chapter 701 (of 49 USC Subtitle IX) unless there is a *clear causal nexus* between the loss and he behavior of the launch or reentry vehicle.'' (Emphasis added.) Committee Report, at 23. But, does reference in the Committee Report to ''clear causal nexus'' mean something more than that which is reasonably foreseeable? And how would intervening events affect eligibility for indemnification?

Guidance is offered in the Committee Report to illustrate the direct relationship between licensed activity and third party losses envisioned by the Committee in using the phrase ''clear causal nexus'' to describe events occurring after licensed activity s concluded but that could be eligible for indemnification. As an example, the Committee Report states that ''if, subsequent to a launch vehicle's successful deployment of a payload that is not a reentry vehicle, the payload returns to Earth and causes third party loss, the loss is not intended to be covered by (49 U.S.C.) sections 70112 and 70113.'' *Id.* Another example involves an airborne launch where an aircraft accident occurs after release of a launch vehicle. According tot he Committee Report, the accident is not intended to be covered by CSLA financial responsibility and indemnification provisions if the accident is not attributable to the launch vehicle. *Id.*

In light of cautionary, albeit non-binding, guidance offered in the Committee Report, the FAA has stressed in this rulemaking that licensees ought not assume that anything that happens as a result of RLV operation after it has been launched, including unlicensed operation on orbit, as qualifying for indemnification.

Following expiration of the policy period required under the regulations, or where coverage is determined by the FAA to be unavailable because of a ''usual'' exclusion, the government undertakes responsibility for payment of third party claims from the first dollar of loss, as long as the claim results from an activity carried out under a launch or reentry licenses and is otherwise eligible for indemnification under 49 U.S.C. 70113. The FAA retains its current practice with respect to ''usual'' exclusions from liability and property insurance coverage. For an exclusion to be deemed ''usual'' under § 450.19(c), a licensee must certify, upon demonstrating compliance with financial responsibility requirements under § 450.15(c)(1)(iii), that insurance coverage for the excluded risk is not commercially available at reasonable costs. Acceptance by the FAA of a certificate of insurance or certification by a licensee does not signify an agency finding that an exclusion is, in fact, ''usual.'' A person requesting such a finding in advance of the conduct of licensed activity may submit actual data, including cost and market data in support of its representation that insurance is not available at reasonable cost.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0649. The FAA is establishing financial responsibility requirements to cover risks associated with the licensed reentry of a reentry vehicle. The FAA will determine, on an individual basis, the amount of required insurance or other form of financial responsibility after examining the risks associated with a particular reentry vehicle, its operational capabilities and designated reentry site. This final rule provides general rules for demonstrating compliance with insurance requirements and implementing statutory-based Government/industry risk sharing provisions in a manner comparable to that currently utilized for commercial launches.

The required information will aid the FAA in establishing financial responsibility requirements covering risks associated with the licensed reentry of a reentry vehicle. The information collected helps the FAA determine the amount of required liability insurance for a reentry is similar in nature to information associated with financial responsibility for licensed launch activities. The frequency of required submissions, therefore, will depend upon the number of prospective reentry vehicle operators authorized to conduct licensed reentry operations. The agency received one comment on the reporting requirements associated with this rule and its has been discussed earlier in the preamble. The estimated number of respondents on an annual basis is five. The estimated average annual burden is 1566 hours.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

Regulatory Evaluation Summary

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall purpose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the final rule will generate benefits that justify its costs and is not ''a significant regulatory action as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The final rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this final rule does not contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses, available in the docket, are summarized below.

Baseline for Analysis

For the purpose of this evaluation, the baseline is defined as industry practice that existed prior to the Commercial Space Act of October 1998 (CSA). The CSA authorizes the Secretary of the U.S. Department of Transportation to require reentry licenses to meet financial responsibility requirements; generally these requirements will be satisfied by acquiring liability insurance to cover those risks imposed by their intended reentry activities. Such requirements will be implemented in the form of this final rule. The baseline should represent routine industry practice in the absence of any final rulemaking requirements by FAA and prior to statutory authority received from Congress.

Costs

Commercial space reentry operators are likely to also be launch operators, given that RLVs will, for the foreseeable future, constitute the bulk of reentry vehicle activity. Since reentry operators will repeat much of the compliance process for the final rule for launch financial responsibility, cost-saving knowledge will be gained that will be helpful in meeting similar requirements for reentry financial responsibility. Even though reentry activities take place at different times than launch activities, still the personnel involved in both activities are expected to have a acquired a high level of proficiency and cost-saving practices. The potential cost of the final reentry financial responsibility requirements are expected to be lower than they otherwise would be, as the result of knowledge gained from launch activities by such operators.

The final rule should result in a stronger, more stable, commercial space transportation industry by implementing the statute in regulations. Limiting liability insurance requirements based on maximum probable loss (MPL) should result in greater certainty of the potential liability costs (and resulting lower business risk) to commercial space transportation firms. The Federal Aviation Administration defines MPL as the tool that establishes the dollar value of the maximum magnitude of loss associated with probable events causing casualties or property damage; the accidental event in question must be sufficiently probable to warrant financial responsibility protection.

The final rule will potentially impose costs on U.S. commercial space reentry operators and the U.S. government cast he result of these two requirements:

• *Insurance Requirements for Licensed Reentry Activities.* In accordance with the statute, the final rule will require U.S. licensed reentry commercial space operators to acquire insurance to cover possible damage to or

loss of government property. The licensee will also be required to obtain insurance to cover potential liability to third parties that result from reentry activities in the event of death, injury, damage, or loss to such third parties (including Government personnel). Final requirements also specify the duration of insurance.

• *Provisions Requiring Private Party Participants In Licensed Activities to Reciprocally Waive Claims Against One Another.* The final rule will require that participants in reentry operations enter into cross-waiver agreements with each other. Specifically, the private parties in licensed activities sign waivers by which the parties agree to forfeit the right to sue each other for damages or injuries associated with the activities. The participants not only assume responsibility for their own losses, but assume responsibility for claims of their contractors and subcontractors against other private party participants in the event the cross-waiver requirement has not been properly applied by them to those parties.

The requirement for 30-day duration of insurance coverage following a planned reentry may impose additional costs on reentry operators. Such costs are not expected to be significant since potential 30-day costs for reentry insurance will be nearly the same as en existing requirement for launch activity, and reentry insurance coverage falls within the typical period of coverage routinely used by the commercial space industry. The shifting of potential costs above MPL of damage and loss claims or of injury claims from private participants to the government will also aid the commercial space transportation industry,. The shifting of these costs onto the government will relieve the licensees of the need to insure for these claims and will also demonstrate U.S. Government support for the commercial space transportation industry. The cross-waiver provisions of the final rule should lower any costs of litigation among private party participants in licensed activities. The final requirement for cross-waivers limits the risk of liability to other participants in licensed activities and results in a more certain business environment (or lower business risk) for all involved parties.

The FAA estimates that the final rule will result in the reallocation of expected liability insurance costs from licensees to the Federal government of about $4,200 ($3,700, discounted) over a five-year period. This estimate is based in part upon work by Princeton Synergetics Inc. (PSI), under contract with the FAA, which analyzed the consequence of the U.S. Government's assumption of risk exposure of up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989), for covered third-party claims. The additional administrative (or paperwork cost) to the Federal government associated with FAA's responsibilities under the final rule is estimated at $7,600 ($5,700, discounted) over five years. Thus, the total cost to the FAA will be about $11,800 ($4,200 + $7,600) over the next 5 years, as the result of the final rule. This cost estimate represents the amount that will be incurred by the FAA for financial responsibility aspects of the licensing process (which take into account those final provisions to protect private party participants against claims by third parties and provisions of cross-waivers).

Benefits

The primary benefit of the final rule is that it will support and promote U.S. commercial space reentry activity within the United States and by U.S. firms. It is clearly in the interest of the United States to remain in a worldwide position of leadership in commercial space flight. Specifically, the final rule will ensure that U.S. reentry operators are not subject to a competitive trade disadvantage by their rivals abroad as a result of their uncertainty in acquiring adequate liability insurance to cover risks associated with their intended reentry activities.

This final rule will also generate other potential qualitative benefits in two forms. First, in terms of third parties, this final rule will provide added assurance that damage to property or casualty losses (*e.g.,* fatalities or serious injuries) resulting from reentry activities will be adequately covered either by commercial liability insurance purchased by reentry operators or by the U.S. Government. This potential benefit will be generated by the final requirement that all reentry operators have liability insurance coverage up to the MPL amount covering certain risks of liability resulting from reentry activities and statutory risk sharing provisions whereby the U.S. Government provides for payment of up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989) about the required amount of insurance. And last, the cross-waiver requirement will also generate potential cost-savings by likely mitigating or eliminating litigation costs among reentry participants.

Final Regulatory Flexibility Determination

The Regulatory Flexibility act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended March 1996, requires regulatory agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.''

The Small business Administration has defined small business entities relating to space vehicles (Standard Industrial Codes 3761, 3764, and 3769) as entities comprising fewer than 1,000 employees, the FAA has been unable to determine the extent to which the final rule will impact the five commercial space reentry entities currently developing reentry technology, due to the lack of information for the required cost of insurance, as explained previously in the cost section of this evaluation. The final rule could impose additional costs on potential small reentry operators in the form of higher insurance requirements that they might otherwise fulfill (which often result in higher premiums), as the result of the final requirement to cover MPL for both third party liability and Government property. On the other hand, the final rule requirement could be partially offset or entirely offset by the potential cost-savings from the federal Government's statutory risk sharing feature of the final rule. This feature will shift the cost of insurance coverage form the licensee for liability beyond MPL after 30 days, up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989). This cost-savings is estimated to be at least $4,200 for all of the potentially affected operators over the 5-year period (2001–2005). Still, with some degree of uncertainty, this information suggests that the potential cost of compliance for reentry small operators might not be significant.

Despite the absence of quantitative cost information for potential reentry licensees and pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FAA certifies with reasonable certainty that the final rule will not impose a significant economic impact on a substantial number of small entities. While there may be significant costs incurred by some operators, such costs are not expected to impact a substantial number of them. Since there is not cost of compliance information available to derive a quantitative cost estimate, there is still uncertainty about compliance costs. As the result of this uncertainty, the FAA solicited comments from industry on the final rule. The FAA did not receive any comments form industry addressing this uncertainty issue

pertaining to the potential cost of compliance.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of U.S. goods and services to foreign countries and barriers affecting the import of foreign goods and services in the United States.

As noted in the benefits section of this evaluation, the final rule will implement statutory provisions such as measures aimed at strengthening the competitive position of U.S. reentry operators by allowing the U.S. Government to share risks of additional liability for reentry activity. Government-backed practices exist in other countries for launch operators that compete with U.S. launch operators. The final rule will ensure that U.S. reentry operators will remain competitive with their counterparts abroad. For this reason, the final rule is not expected to place domestic commercial space reentry operators at a competitive trade disadvantage with respect to foreign interests competing for similar business in international markets. It will also not hinder the ability of foreign commercial space rivals to compete in the United States. Therefore, the final rule is neither expected to affect trade opportunities of U.S. commercial space reentry operators doing business abroad nor will it adversely impact the trade opportunities of foreign firms doing business in the United States.

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' In 1999 dollars, this estimate of $100 million translates into $107 million using the GDP implicit price deflators for 1995 and 1999.

Based on the evaluation and impacts reported herein, the final rule is not expected to meet the $107 million per year cost threshold. Consequently, it will not impose a significant cost on or uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to the final regulation.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA determined that this final rule does not have federalism implications.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(i), regulatory documents which cover administrative or procedural requirements qualify for a categorical exclusion.

Energy Impact

The energy impact of the rulemaking action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 450

Armed forces; Claims; Federal building and facilities; Government property; Indemnity payments; Insurance; Reporting and recordkeeping requirements; Rockets Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter III of title 14 of the Code of Federal Regulations as follows:

1. Subchapter C of Chapter III, Title 14, Code of Federal Regulations, is amended by adding a new Part 450 to read as follows:

PART 450—FINANCIAL RESPONSIBILITY

Subpart A—Financial Responsibility for Licensed Reentry Activities

Sec.

450.1 Scope of part; basis.
450.3 Definitions.
450.5 General.
450.7 Determination of maximum probable loss.
450.9 Insurance requirements for licensed reentry activities.
450.11 Duration of coverage; modifications.
450.13 Standard conditions of insurance coverage.
450.15 Demonstration of compliance.
450.17 Reciprocal waiver of claims requirements.
450.19 United States payment of excess third-party liability claims.
Appendix A to part 450—Information Requirements for Obtaining a Maximum Probable Loss Determination for Licensed Reentry Activities.
Appendix B to Part 450—Agreement for Waiver of Claims and Assumption of Responsibility.

Authority: 49 U.S.C. 70101–70121; 49 CFR 1.47.

Subpart A—Financial Responsibility for Licensed Reentry Activities

§ 450.1 Scope of part; basis.

This part sets forth financial responsibility and allocation of risk requirements applicable to commercial space reentry activities that are authorized to be conducted under a license issued pursuant to this subchapter.

§ 450.3 Definitions.

(a) For purposes of this part—

Bodily injury means physical injury, sickness, disease, disability, shock, mental anguish, or mental injury sustained by any person, including death.

Contractors and subcontractors means those entities that are involved at any tier, directly or indirectly, in licensed reentry activities, and includes suppliers of property and services, and the component manufacturers of a reentry vehicle or payload. Contractors and subcontractors include those entities as defined in § 440.3(a)(2) of this chapter involved in licensed launch activities associated with a particular reentry.

Customer means

(1) A person who procures reentry services from a licensee or launch services associated with a particular reentry;

(2) Any person to whom the customer has sold, leased, assigned or otherwise transferred its rights in the payload (or any part thereof), to be reentered by the licensee, including a conditional sale, lease, assignment, or transfer of rights.

(3) Any person who has placed property on board the payload for reentry or payload services; and

(4) Any person to whom the customer has transferred its rights to reentry services.

Federal range facility means a Government-owned installation at which launches or reentries take place.

Financial responsibility means statutorily required financial ability to satisfy liability as required under 49 U.S.C. 70101–70121.

Government personnel means employees of the United States, its agencies, and its contractors and subcontractors, involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry. Employees of the United States include members of the Armed Forces of the United States.

Hazardous operations means activities, processes, and procedures that, because of the nature of the equipment, facilities, personnel, or environment involved or function being performed, may result in bodily injury or property damage.

Liability means a legal obligation to pay claims for bodily injury or property damage resulting from licensed reentry activities.

License means an authorization to conduct licensed reentry activities, issued by the Office under this subchapter.

Licensed launch activities means the launch of a launch vehicle as defined in a regulation or license issued by the Office and carried out pursuant to a launch license.

Licensed reentry activities means the reentry of a reentry vehicle, including a reusable launch vehicle (RLV), as defined in a regulation or license issued by the Office and carried out pursuant to a license.

Maximum probable loss (MPL) means the greatest dollar amount of loss for bodily injury or property damage that is reasonably expected to result from licensed reentry activities;

(1) Losses to third parties, excluding Government personnel and other launch or reentry participant's employees involved in licensed reentry activities, that are reasonably expected to result from licensed reentry activities are those having a probability of occurrence on the order of no less than one in ten million.

(2) Losses to Government property and Government personnel, as defined in this section, that are reasonably expected to result from licensed reentry activities are those having a probability of occurrence on the order of no less than in one hundred thousand.

Office means the Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration, U.S. Department of Transportation.

Property damage means partial or total destruction, impairment, or loss of tangible property, real or personal.

Regulations means the Commercial Space Transportation Licensing Regulations, codified at 14 CFR Ch. III.

Third party means:

(1) Any person other than:

(i) The United States, its agencies, and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry;

(ii) The licensee and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry; and

(iii) The customer and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry.

(2) Government personnel, as defined in this section, are third parties.

United States means the United States Government, including its agencies.

(b) Except as otherwise provided in this section, any term used in this part and defined in 49 U.S.C. 70101–70121 or in § 401.5 of this chapter shall have the meaning contained therein.

§ 450.5 General.

(a) No person shall commence or conduct reentry activities that require a license unless that person has obtained a license and fully demonstrated compliance with the financial responsibility and allocation of risk requirements set forth in this part.

(b) The Office shall prescribe the amount of financial responsibility a licensee is required to obtain and any additions to or modifications of the amount in a license order issued concurrent with or subsequent to the issuance of a license.

(c) Demonstration of financial responsibility under this part shall not relieve the licensee of ultimate responsibility for liability, loss, or damage sustained by the United States resulting from licensed reentry activities, except to the extent that:

(1) Liability, loss, or damage sustained by the United States results from willful misconduct of the United States or its agents;

(2) Covered claims of third parties for bodily injury or property damage arising out of any particular reentry exceed the amount of financial responsibility required under § 450.9(c) of this part and do not exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989), above such amount, and are payable pursuant to 49 U.S.C. 70113 and § 450.19 of this part. Claims of employees of entities listed in paragraphs (1)(ii) and (iii) of the definition of ''third party'' in § 450.3(a) of this part for bodily injury or property damage are not covered claims;

(3) Covered claims for property loss or damage exceed the amount of financial responsibility required under § 450.9(e) of this part and do not result from willful misconduct of the licensee; or

(4) The licensee has no liability for covered claims by third parties for bodily injury or property damage arising out of any particular reentry that exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above the amount of financial responsibility required under § 450.9(c) of this part.

(d) A licensee's failure to comply with the requirements in this part may result in suspension or revocation of a license, and subjects the licensee to civil penalties as provided in part 405 of this chapter.

§ 450.7 Determination of maximum probable loss.

(a) The Office shall determine the maximum probable loss (MPL) from covered claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from licensed reentry activities. The maximum probable loss determination forms the basis for financial responsibility requirements issued in a license order.

(b) The Office issues its determination of maximum probable loss no later than ninety days after a licensee or transferee has requested a determination and submitted all information required by the Office to make the determination. The Office shall consult with Federal agencies that are involved in, or whose personnel or property are exposed to risk of damage or loss as a result of, licensed reentry activities before issuing

a license order prescribing financial responsibility requirements and shall notify the licensee or transferee if interagency consultation may delay issuance of the MPL determination.

(c) Information requirements for obtaining a maximum probable loss determination are set forth in appendix A to this part. Any person requesting a determination of maximum probable loss must submit information in accordance with Appendix A requirements, unless the Office has waived requirements. In lieu of submitting required information, a person requesting a maximum probable loss determination may designate and certify certain information previously submitted for a prior determination as complete, valid, and equally applicable to its current request. The requester is responsible for the continuing accuracy and completeness of information submitted under this part and shall promptly report any changes in writing.

(d) The Office shall amend a determination of maximum probable loss required under this section at any time prior to completion of licensed reentry activities as warranted by supplementary information provided to or obtained by the Office after the MPL determination is issued. Any change in financial responsibility requirements as a result of an amended MPL determination shall be set forth in a license order.

(e) The Office may make a determination of maximum probable loss at any time other than as set forth in paragraph (b) of this section, upon request by any person.

§ 450.9 Insurance requirements for licensed reentry activities.

(a) As a condition of each reentry license, the licensee must comply with insurance requirements set forth in this section and in a license order issued by the Office, or otherwise demonstrate the required amount of financial responsibility.

(b) The licensee must obtain and maintain in effect a policy or policies of liability insurance, in an amount determined by the Office under paragraph (c) of this section, that protects the following persons as additional insureds to the extent of their respective potential liabilities against covered claims by a third party for bodily injury or property damage resulting from licensed reentry activities:

(1) The licensee, its customer, and their respective contractors and subcontractors, and the employees of each, involved in licensed reentry activities or in licensed launch activities associated with a particular reentry;

(2) The United States, its agencies, and its contractors and subcontractors involved in licensed reentry activities or in licensed launch activities associated with a particular reentry; and

(3) Government personnel.

(c) The Office shall prescribe for each licensee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from licensed reentry activities. Covered third-party claims include claims by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under paragraph (d) of this section. The amount of insurance required is based upon the Office's determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $500 million; or

(2) The maximum liability insurance available on the world market at a reasonable cost, as determined by the Office.

(d) The licensee must obtain and maintain in effect a policy or policies of insurance, in an amount determined by the Office under paragraph (e) of this section, that covers claims by the United States, its agencies, and its contractors and subcontractors involved in licensed reentry activities resulting from licensed reentry activities. Property covered by this insurance must include all property owned, leased, or occupied by, or within the care, custody, or control of, the United States and its agencies, and its contractors and subcontractors involved in licensed reentry activities, at a Federal range facility. Insurance must protect the United States and its agencies, and its contractors and subcontractors involved in licensed reentry activities.

(e) The Office shall prescribe for each licensee the amount of insurance required to compensate claims for property damage under paragraph (d) of this section resulting from licensed reentry activities in connection with any particular reentry. The amount of insurance is based upon a determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $100 million; or

(2) The maximum available on the world market at a reasonable cost, as determined by the Office.

(f) In lieu of a policy of insurance, licensee may demonstrate financial responsibility in another manner meeting the terms and conditions applicable to insurance as set forth in this part. The licensee must describe in detail the method proposed for demonstrating financial responsibility and how it assures that the licensee is able to cover claims as required under this part.

§ 450.11 Duration of coverage; modifications.

(a) Insurance coverage required under § 450.9, or other form of financial responsibility, shall attach upon commencement of licensed reentry activities, and remain in full force and effect as follows:

(1) For ground operations, until completion of licensed reentry activities at the reentry site; and

(2) For other licensed reentry activities, thirty days from initiation of reentry flight; however, in the event of an abort that results in the reentry vehicle remaining on orbit, insurance shall remain in place until the Office's determination that risk to third parties and Government property as a result of licensed reentry activities is sufficiently small that financial responsibility is no longer necessary, as determined by the Office through the risk analysis conducted to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the Office is notified at least 30 days in advance and expressly approves the modification.

§ 450.13 Standard conditions of insurance coverage.

(a) Insurance obtained under § 450.9 shall comply with the following terms and conditions of coverage:

(1) Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve the insurer of any of its obligations under any policy.

(2) Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed reentry activities in connection with any particular reentry.

(3) Except as provided in this paragraph herein, each policy must pay claims from the first dollar of loss, without regard to any deductible, to the limits of the policy. A licensee may obtain a policy containing a deductible amount if the amount of the deductible is placed in escrow account or otherwise demonstrated to be unobligated, unencumbered funds, of the licensee, available to compensate claims at any time claims may arise.

(4) Each policy shall not be invalidated by any action or inaction of

the licensee or any additional insured, including nonpayment by the licensee of the policy premium, and must insure the licensee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or any additional insured (other than a breach or violation by the licensee or an additional insured, and then only as against that licensee or additional insured).

(5) Exclusions from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any other insurance that is carried by the licensee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except the policy limits, operate in the same manner as if there were a separate policy with and covering the licensee and each additional insured.

(8) Each policy must be placed with an insurer of recognized reputation and responsibility that either:

(i) Is licensed to do business in any State, territory, possession of the United States, or the District of Columbia; or

(ii) Includes in each of its policies of insurance obtained under this part a contract clause in which the insurer agrees to submit to the jurisdiction of a court of competent jurisdiction within the United States and designates an authorized agent within the United States for service of legal process on the insurer.

(9) Except as to claims resulting from the willful misconduct of the United States or its agents, the insurer shall waive any and all rights of subrogation against each of the parties protected by required insurance.

(b) [Reserved.]

§ 450.15 Demonstration of compliance.

(a) A licensee must submit evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license order specifies otherwise due to the proximity of the licensee's intended date for commencement of licensed activities:

(1) The waiver of claims agreement required under § 450.17(c) of this part must be submitted at least 30 days before commencement of licensed launch activities involving the reentry licensee;

(2) Evidence of insurance must be submitted at lest 30 days before commencement of licensed launch activities involving the reentry licensee;

(3) Evidence of financial responsibility in a form other than insurance, as provided under § 450.9(f) of this part, must be submitted at least 60 days before commencement of licensed launch activities involving the reentry licensee; and

(4) Evidence of renewal of insurance or other form of financial responsibility must be submitted at least 30 days in advance of its expiration date.

(b) Upon a complete demonstration of compliance with financial responsibility all allocation of risk requirements under this part, the requirements shall preempt any provisions in agreements between the licensee and an agency of the United States governing access to or use of United States reentry property or reentry services for licensed reentry activities which address financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112, 70113.

(c) A licensee must demonstrate compliance as follows:

(1) The licensee must provide proof of insurance required under § 450.9 by:

(i) Certifying to the Office that it has obtained insurance in compliance with the requirements of this part and any applicable license order;

(ii) Filing with the Office one or more certificates of insurance evidencing insurance coverage by one or more insures under a currently effective and properly endorsed policy or policies of insurance, applicable to licensed reentry activities, on terms and conditions and in amounts prescribed under this part, an specifying policy exclusions;

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under § 450.19(c) of this part, or for purposes of implementing the Government's waiver of claims for property damage under 49 U.S.C. 70112(b)(2), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

(iv) Submitting to the Office, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by § 450.17(c) of this part, executed by the licensee and its customer.

(2) Certifications required under this section must be signed by a duly authorized officer of the licensee.

(d) Certificate(s) of insurance required under paragraph (c)(1)(ii) of this section must be signed by the insurer issuing the policy and accompanied by an opinion of the insurance broker that the insurance obtained by the licensee complies with the specific requirements for insurance set forth in this part and any applicable license order.

(e) The licensee must maintain, and make available for inspection by the Office upon request, all required policies of insurance and other documents necessary to demonstrate compliance with this part.

(f) In the event the licensee demonstrates financial responsibility using means other than insurance, as provided under § 450.9(f) of this part, the licensee must provide proof that it has met the requirements set forth in this part and in a license order issued by the Office.

§ 450.17 Reciprocal waiver of claims requirements.

(a) As a condition of each reentry license, the licensee shall comply with reciprocal waiver of claims requirements as set forth in this section.

(b) The licensee shall implement reciprocal waivers of claims with its contractors and subcontractors, its customer(s) and the customer's contractors and subcontractors, and the launch licensee and its contractors and subcontractors and customers, under which each party waives and releases claims against the other parties to the waivers and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from reentry activities, including licensed launch activities associated with a particular reentry, regardless of fault.

(c) For each licensed reentry in which the U.S. Government, its agencies, or its contractors and subcontractors is involved in licensed reentry activities or licensed launch activities associated with a particular reentry, or where property insurance is required under § 440.9(d) of this subchapter or § 450.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee, and its customer shall enter into a reciprocal waiver of claims agreement in the form set forth in appendix B to this part or the satisfies its requirements.

(d) The reentry licensee and its customer, the launch licensee and its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to indemnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out the indemnifying party's failure to implement properly the waiver requirement.

§ 450.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against the licensee, the customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed reentry activities, the licensee, customer and the contractors and subcontractors of each involved in licensed launch activities associated with a particular reentry, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed reentry activities and licensed launch activities associated with a particular reentry, to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular reentry:

(1) Exceeds the amount of insurance required under § 450.9(b); and

(2) Is not more than $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under § 450.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with § 450.15(c)(1)(iii) of this part for the United States to cover the claims.

(d) Upon the expiration of the policy period prescribed in accordance with § 450.11(a), the United States shall provide for payment of claims that are payable under 49 U.S.C. 70113 from the first dollar of loss up to $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 49 U.S.C. 70113 shall be subject to:

(1) Prompt notice by the licensee to the Office that the total amount of claims arising out of licensed reentry activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the Office of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the Office and submitted by the President.

(f) The Office will:

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 49 U.S.C. 70113;

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.

(g) The Office may withhold payment of a claim if it finds that the amount is unreasonable, unless it is the final order of a court that has jurisdiction over the matter.

Appendix A to Part 450—Information Requirements for Obtaining a Maximum Probable Loss Determination for Licensed Reentry Activities

Any person requesting a maximum probable loss determination shall submit the following information to the Office, unless the Office has waived a particular information requirement under 14 CFR 450.7(c):

I. General Information

A. Reentry mission description.

1. A description of mission parameters, including:

a. Orbital inclination; and

b. Orbit altitudes (apogee and perigee).

c. Reentry trajectories.

2. Reentry flight sequences.

3. Reentry initiation events and time for each event.

4. Nominal landing location, alternative landing sites and contingency abort sites.

5. Identification of landing facilities, (planned date of reentry), and reentry windows.

6. If the applicant has previously been issued a license to conduct reentry activities using the same reentry vehicle to the same reentry (site) facility, a description of any differences planned in the conduct of proposed activities.

B. Reentry Vehicle Description.

1. General description of the reentry vehicle including dimensions.

2. Description of major systems, including safety systems.

3. Description of propulsion system (reentry initiation system) and type of fuel used.

4. Identification of all propellants to be used and their hazard classification under the Hazardous Materials Table, 49 CFR 172.101.

5. Description of hazardous components.

C. Payload.

1. General description of any payload, including type (e.g., telecommunications, remote sensing), propellants, and hazardous components or materials, such as toxic or radioactive substances.

D. Flight Termination System/Flight Safety System.

1. Identification of any flight termination system (FTS) or Flight Safety System (FSS) on the reentry vehicle, including a description of operations and component location on the vehicle.

II. Flight Operations

A. Identification of reentry site facilities exposed to risk during vehicle reentry and landing.

B. Identification of accident failure scenarios, probability assessments for each, and estimation of risks to Government personnel, individuals not involved in licensed reentry activities, and Government property, due to property damage or bodily injury. The estimation of risks for each scenario shall take into account the number of such individuals at risk as a result of reentry (flight) and landing of a reentry vehicle (on-range, off-range, and down-range) and specific, unique facilities exposed to risk. Scenarios shall cover the range of reentry trajectories for which authorization is sought in the license application.

C. On-orbit risk analysis assessing risks posed by a reentry vehicle to operational satellites during reentry.

D. Reentry risk analysis assessing risks to Government personnel and individuals not involved in licensed reentry activities as a result of inadvertent or random reentry of the launch vehicle or its components.

E. Nominal and 3-sigma dispersed trajectories in one-second intervals, from reentry initiation through landing or impact. (Coordinate system will be specified on a case by case basis)

F. Three-sigma landing or impact dispersion area in downrange (+/−) and crossrange (+/−) measured from the nominal, and contingency landing or impact target. The applicant is responsible for including all significant landing or impact dispersion constituents in the computations of landing or impact dispersion areas. The dispersion constituents should include, but not be limited to: variation in orbital position and velocity at the reentry initiation time; variation in re-entry initiation time offsets, either early or late; variation in the bodies' ballistic coefficient; position and velocity variation due to winds; and variations in re-entry retro-maneuvers.

G. Malfunction turn data (tumble, trim) for guided (controllable) vehicles. The malfunction turn data shall include the total angle turned by the velocity vector versus turn duration time at one second interval; the magnitude of the velocity vector versus turn duration time at one second intervals; and an indication on the data where the re-entry body will impact the earth, or breakup due to aerodynamic loads. A malfunction turn data set is required for each malfunction

time. Malfunction turn start times shall not exceed four-second intervals along the trajectory.

H. Identification of debris casualty areas and the projected number and ballistic coefficient of fragments expected to result from each failure mode during reentry, including random reentry.

III. Post-Flight Processing Operations

A. General description of post-flight ground operations including overall sequence and location of operations for removal of vehicle and components and processing equipment from the reentry site facility and for handling of hazardous materials, and designation of hazardous operations.

B. Identification of all facilities used in conducting post-flight processing operations.

C. For each hazardous operation:

1. Identification of location where each operation is performed, including each building or facility identified by name or number.

2. Identification of facilities adjacent to location where each operation is performed and exposed to risk, identified by name or number.

3. Maximum number of Government personnel and individuals not involved in license reentry activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.

4. Identify and provide reentry site facility policies or requirements applicable to the conduct of operations.

Appendix B to Part 450—Agreement for Waiver of Claims and Assumption of Responsibility

This Agreement is entered into this day of , by and among [Licensee] (the ''Licensee''), [Customer] (the ''Customer''), and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of § 450.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations'').

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities described in § 450.3 of the Regulations, 14 CFR 450.3.

Customer means the above-named Customer on behalf of the Customer and any person described in § 450.3 of the Regulations, 14 CFR 450.3.

License means License No. issued on , by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

b. Customer hereby waives and releases claims it may have against Licensee and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee and Customer, and against their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e) or sections 450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §§ 440.9(c) and (e) or §§ 450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

4. Extension of Assumption of Responsibility and Waiver

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless,and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and Customer, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury of Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §§ 440.9(c) and (e) or §§ 450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any or them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, and the United States and its agencies, servants, agents, subsidiaries, employees assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors and Subcontractors, or any person on whose behalf Customer enters into

this Agreement, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee and Customer and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility under § 440.9(c) and (e) or 450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

6. Assurances Under 49 U.S.C. 70112(e)

Nothwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Launch Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result form willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) or § 450.9(e) of the Regulations (14 CFR 440.9(e) or 450.9(e); (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) or § 450.9(c) of the Regulations (14 CFR 440.9(c) or 450.9(c)), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 49 U.S.C. 70113 and § 440.19 or § 450.19 of the Regulations (14 CFR 440.19 or 450.19); or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) or § 450.9(c) of the Regulations (14 CFR 440.9(c) or 450.9(c)).

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting form Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Licensee and Customer and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) In the event that more than one customer is involved in Licensed Activities, references herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In Witness Whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: .
Its: .

Customer

By: .
Its: .

Department of Transportation

By: .
Its: .

Issued in Washington, DC, on August 28, 2000.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 00–22565 Filed 9–18–00; 8:45 am]

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September 19, 2000

Part IV

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Deutsche Bank AG and Its Affiliates (Collectively, Deutsche Bank or the Applicants); Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10770, et al.]

Proposed Exemptions; Deutsche Bank AG and its Affiliates (Collectively, Deutsche Bank or the Applicants)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG and its Affiliates (Collectively, Deutsche Bank or the Applicants) Located in Frankfurt, Germany

[Application No. D–10770]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 4975(c)(2) of the Code, and section 8477(c)(3) of FERSA, in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Exemption for the Acquisition, Holding and Disposition of Deutsche Bank AG Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of June 4, 1999 until the date this proposed exemption is granted, to the acquisition, holding and disposition of the common stock of Deutsche Bank AG (the Deutsche Bank AG Stock) by Index and Model-Driven Funds managed by Deutsche Bank, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Deutsche Bank AG Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank AG Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(b) All aggregate daily purchases of Deutsche Bank AG Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Deutsche Bank AG Stock occurring on the applicable exchange and automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Deutsche Bank AG Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of Deutsche Bank AG Stock occur either (i) on a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Deutsche Bank that is subject to regulation and supervision by the Deutsche Bundesbank and the Bundesaufsichtsamt fuer das Kreditwesen (the BAK), the Bundesaufsichtsamt fur den Wertpapierhandel (the BAWe), or another applicable regulatory authority (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the Securities Exchange Act of 1934 (the '34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority.

(d) No transactions by a Fund involve purchases from, or sales to, Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than five (5) percent of the total amount of Deutsche Bank AG Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Deutsche Bank.

(f) Deutsche Bank AG Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Deutsche Bank authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank AG Stock, pursuant to the procedures described in this notice of proposed exemption, other than in the case of an employee benefit plan sponsored or maintained by Deutsche Bank and/or an Affiliate for its own employees (a Deutsche Bank Plan).

(h) A fiduciary independent of Deutsche Bank directs the voting of the Deutsche Bank AG Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank AG Stock are required or permitted to vote.

(i) No more than ten (10) percent of the assets of any Fund that acquires and holds Deutsche Bank AG Stock is comprised of assets of any Deutsche Bank Plan(s) for which Deutsche Bank exercises investment discretion.

Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Deutsche Bank Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Deutsche Bank AG Stock or the common stock of an affiliate of Deutsche Bank AG (Deutsche Bank Affiliate Stock) by Index and Model-Driven Funds managed by Deutsche Bank, provided that the following conditions and the general conditions in Section II are met:

(a) The acquisition or disposition of Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock (collectively, Deutsche Bank Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(b) Whenever Deutsche Bank Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Deutsche Bank Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Deutsche Bank Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Deutsche Bank that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Deutsche Bank Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Deutsche Bank Stock, Deutsche Bank appoints a fiduciary which is independent of Deutsche Bank to design acquisition procedures and monitor Deutsche Bank's compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Deutsche Bank Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Deutsche Bank Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Deutsche Bank Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Deutsche Bank that is subject to regulation by either the SEC, the BAK, the BAWe, or another applicable regulatory authority, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Deutsche

Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of either Deutsche Bank AG Stock or any Deutsche Bank Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Deutsche Bank.

(g) Deutsche Bank Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Deutsche Bank authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank Stock, pursuant to the procedures described herein, other than with respect to a Deutsche Bank Plan.

(i) A fiduciary independent of Deutsche Bank directs the voting of the Deutsche Bank Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds Deutsche Bank Stock is comprised of assets of Deutsche Bank Plan(s) for which Deutsche Bank exercises investment discretion.

Section III—General Conditions

(a) Deutsche Bank maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Deutsche Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Deutsche Bank or commercial or financial information which is considered confidential.

Section IV—Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Deutsche Bank, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which Deutsche Bank does not use its discretion, or data within their control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Deutsche Bank, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Deutsche Bank, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of Deutsche Bank; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of Deutsche Bank.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of Deutsche Bank Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term ''Deutsche Bank'' refers to Deutsche Bank AG or an Affiliate, as defined below in paragraph (g)

(g) The term ''Affiliate'' means, with respect to Deutsche Bank AG, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Deutsche Bank AG.

(h) An ''affiliate'' of Deutsche Bank includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(k) The term ''recognized securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the '34 Act (15 U.S.C. 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR Part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR Part 240.3b–16).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of June 4, 1999, for those transactions described in Section I above, and as of the date the final grant is published in the **Federal Register** for those transactions described in Section II above.

Summary of Facts and Representations

1. Deutsche Bank AG is a bank organized under the laws of Germany and is the largest bank in the world in terms of assets. Bankers Trust Company, its wholly-owned subsidiary, is a New York banking corporation and a leading commercial bank, providing a wide range of banking, fiduciary, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Deutsche Bank indirectly owns all of the equity interest of Bankers Trust Company, a New York banking corporation and a member bank of the Federal Reserve system. Bankers Trust Company is one of the largest trustees of ERISA plans and a large manager of passively-managed funds. Other Deutsche Bank asset managers (together with Bankers Trust Company, ''DB Asset Managers'') may also manage ERISA assets in passively-managed styles in the future. As of June 30, 1999, Deutsche Bank AG and its Affiliates had consolidated assets of $847,658,000,000 and total stockholders' equity of $33.9 billion.

2. The DB Asset Managers manage different collective investment funds in various ways to enable plan assets to be diversified to reduce risk and to be invested in the types of investments that an independent fiduciary believes is appropriate at a particular time. Index Funds and Model-Driven Funds (the ''Funds'' or the ''Indexed Accounts'') are two examples of the Affiliates' collective investment funds which include plan investors.

An Index Fund, as defined supra, may be a separately managed account or a collective investment fund, the objective of which is the replication of the performance of an independently maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. Index Funds are passively managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indices rather than according to active evaluation of the investments.

A Model-Driven Fund, as defined supra, may be a separately managed account or a collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities. An example of a Model-Driven Fund would include a fund which ''transforms'' an index, making investments according to a computer model which uses such data as earnings, dividends and price-earning ratios for common stocks included in the index.

The process for the establishment and operation of all Indexed Accounts that are model-driven is disciplined. Objective rules are established for each model. Since the Model-Driven Funds operate pursuant to pre-specified computer programs, the rules and programs are changed only infrequently. In this regard, there have been three (3) Funds holding ERISA assets that, since June 4, 1999, have acquired, held and/or disposed of Deutsche Bank AG Stock.[1]

The Applicants request that the exemption proposed herein be retroactively effective as of June 4, 1999, to permit such transactions by these Funds. The Applicants are not requesting any retroactive relief for the acquisition, holding or disposition of the common stock of any Affiliates of Deutsche Bank (*i.e.,* Deutsche Bank Affiliate Stock). The Applicants represent that no Index or Model-Driven Funds containing ''plan assets'' covered by the Act have held such Stock.[2] The Applicants also request that any exemptive relief for cross-trades of securities by Index and Model-Driven Funds maintained by DB Asset Managers be considered separately.[3]

3. The Applicants represent that they provide investment advisory and management services to ERISA-covered plans through separately managed accounts and through collective investment vehicles. The Applicants' investment management services include indexed, quantitative, and structured investment strategies. In addition to ERISA-covered plans, the Applicants' clients include retirement plans with non-U.S. participants, governmental entities, governmental plans, church plans, mutual funds, and other institutional investors.

4. In their capacity as fiduciary of an employee benefit plan, the Applicants may be directed by an independent plan fiduciary or a plan participant that has the ability to direct investments for his/her plan account under the plan document. Alternatively, in those cases in which the Applicants manage investments made for the plan, the Applicants represent that their discretionary authority over whether the plan invests in particular Funds is restricted by an independent plan fiduciary.

5. The Applicants request that Index and Model-Driven Funds be permitted to invest in Deutsche Bank Stock if such

[1] The Applicants state that acquisitions of Deutsche Bank AG Stock have been made only by Funds that already held such Stock in their portfolios as of June 4, 1999. Thus, there have been no new acquisitions of Deutsche Bank AG Stock by any Funds as a result of an initial addition of such Stock to their portfolios since that time. Such initial additions of Deutsche Bank AG Stock will only be made by a Fund once this proposed exemption is granted, under the conditions required herein for a ''Buy-up'' period.

[2] See 29 CFR 2510.3–101; Definition of ''plan assets''-plan investments.

[3] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

Stock is included among the securities listed in the index utilized by the Fund. The Applicants have identified over forty-two (42) indices that currently include either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock. Among the Indexes which include Deutsche Bank Stock are the DAX Index,[4] the FT–SE Eurotop 100 Index, the MSCI Euro Index,[5] the FTSE Eurotop 300 Index, the FTSE E300 Financial Index, and the Bloomberg Europe Index. These indexes are compiled by financial information agencies, such as Standard & Poor's, Financial Times Ltd., and Morgan Stanley & Company International. These agencies are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. In each instance, the indexes are compiled by organizations that are independent of Deutsche Bank and are generally accepted standardized indices of securities that are not tailored for the use of Deutsche Bank. While many of these indexes are not currently utilized by DB Asset Managers for their Index and Model-Driven Funds, there is a possibility that Funds holding assets of ERISA-covered plans will be established in the future that are based on these indexes. However, since June 4, 1999, DB Asset Managers have excluded Deutsche Bank Stock from the portfolios of any new Index and Model-Driven Funds even though such Stock is included in independently maintained indexes upon which such Funds are based. For those Index Funds whose goal is to replicate the rate of return of the index by tracking the capitalization-weighted or other specified composition of securities listed in the index, such exclusions of Deutsche Bank Stock create tracking errors which must be accounted for by re-weighting other securities in the index. For Model-Driven Funds that transform an index in a model-prescribed way, such exclusions of Deutsche Bank Stock create operational inefficiencies and strategic uncertainties that affect the criteria and data necessary to achieve the desired rates of return.

6. The Applicants state that the proposed exemption is necessary to allow Funds holding ''plan assets'' to purchase and hold Deutsche Bank Stock in order to replicate the capitalization-weighted or other specified composition of Deutsche Bank Stock in an independently maintained third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.[6]

In addition, the Applicants represent that there will be instances, once this proposed exemption is granted, when Deutsche Bank Stock will be added to an index on which a Fund is based or will be added to the portfolio of a Fund which seeks to track an index that includes such Stock. These instances will be referred to hereafter as a ''Buy-up''.[7] In such instances, acquisitions of Deutsche Bank Stock will be necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the index, as determined by the independent organization maintaining such index, or to the correct weighting for such Stock as determined by the computer model which has been used to transform the index. If the Index or Model-Driven Fund holds ''plan assets,'' the Applicants represent that all acquisitions of Deutsche Bank Stock by such Fund will comply with the ''Buy-up'' conditions of this proposed exemption. These conditions are as follows:

(A) Purchases will be from or through only one broker or dealer on a single trading day;

(B) Based on the best available information, purchases will not be the opening transaction for the trading day;

(C) Purchases will not be effected in the last half hour before the scheduled close of the trading day;

(D) Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(E) Purchases will not exceed 15 percent of the daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(F) All purchases and sales of Deutsche Bank Stock will occur either (i) on a recognized securities exchange (as defined in Section IV(k)), (ii) through an automated trading system (as defined in Section IV(j)) operated by a broker-dealer that is either registered under the Securities Exchange Act of 1934 (the '34 Act) and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) above) that is operated by a recognized securities exchange (as defined in Section IV(k)), pursuant to the applicable securities laws which provide a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(G) If the necessary number of shares of Deutsche Bank Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Deutsche Bank Stock, Deutsche Bank will appoint a fiduciary which is independent of Deutsche Bank to design acquisition procedures and monitor DB Asset Managers' compliance with such procedures.[8]

The independent fiduciary and its principals will be completely independent from the Applicants. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices.

[4] The DAX (Deutsche Aktienindex) is maintained by the Deutsche Bourse, a German stock exchange.

[5] Morgan Stanley maintains the MSCI (*i.e.,* Morgan Stanley Composite Index), which contains various indices of foreign securities.

[6] The Applicants are not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of Deutsche Bank Stock by the Deutsche Bank Plans which invest in the Applicants' Index Funds. In this regard, such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department is not providing an opinion in this proposed exemption as to whether the conditions of section 408(e) of the Act are met.

[7] The Applicants anticipate that generally acquisitions of Deutsche Bank Stock by an Index or Model-Driven Fund in a ''Buy-up'' will occur within 10 business days from the date of the event which causes the particular Fund to require Deutsche Bank Stock. Deutsche Bank does not anticipate that the amounts of Deutsche Bank Stock acquired by any Fund in a ''Buy-up'' will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any ''Buy-up'' of Deutsche Bank Stock.

[8] In this regard, all Funds holding Deutsche Bank AG Stock as of June 4, 1999, which have continued to acquire, hold and dispose of Deutsche Bank AG Stock in order to track indexes including Deutsche Bank AG Stock will not need to have daily transactions involving such Stock directed by an independent fiduciary. Deutsche Bank states that the amount of Deutsche Bank AG Stock involved in such transactions has been and continues to be determined by the independent organization which created and maintains the relevant index, and all other conditions required under this proposed exemption have been met.

Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Deutsche Bank Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the Funds. The Applicants would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicants further expect that such a program will allow the Applicants to acquire the necessary shares of Deutsche Bank Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor the Applicants' compliance with the trading program and procedures developed for the initial acquisition of Deutsche Bank Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify the Applicants should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with the Applicants and must approve in advance any alteration of the trading procedures.

7. Subsequent to initial acquisitions necessary to bring a Fund's holdings of Deutsche Bank Stock to its specified weighting in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Deutsche Bank Stock by the Funds will not exceed on any particular day the greater of:

(i) 15 percent of the average daily trading volume for the Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as described herein) for the previous five (5) business days, or

(ii) 15 percent of the trading volume for Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as described herein) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

8. Deutsche Bank represents that as of June 4, 1999 until the date this proposed exemption is granted, all purchases and sales of Deutsche Bank Stock by the Funds have occurred and will continue to occur in one of the following ways: (i) through the Frankfurt Stock Exchange, a recognized securities exchange as defined in Section IV(k) above; (ii) through an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer that is subject to regulation by the BAK, the BAWe, or another applicable regulatory authority (pursuant to the applicable securities laws), that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) through a direct, arms-length transaction entered into on a principal basis with a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority.[9]

In addition, Deutsche Bank states that as of the date this proposed exemption is granted, all future transactions by the Funds involving Deutsche Bank Stock which do not occur in connection with a Buy-up of such Stock by a Fund, as described above, will be either: (i) Entered into on a principal basis with a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority; (ii) effected on an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer subject to regulation by either the SEC, the BAK, the BAWe, or another applicable regulatory authority, or on an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) above) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) effected through a recognized securities exchange (as defined in Section IV(k) above) so long as the broker is acting on an agency basis.

9. With respect to all acquisitions and dispositions of Deutsche Bank AG Stock by the Funds since June 4, 1999, the Applicants state that no such transactions have involved purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. The Applicants represent that all future acquisitions and dispositions of either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock by any Index or Model-Driven Funds maintained by Deutsche Bank will also not involve any purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).[10]

10. The Applicants state that no more than five (5) percent of the total amount of either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by DB Asset Managers.

For purposes of the acquisition and holding of Deutsche Bank AG Stock by all of the Funds from June 4, 1999 until the date this proposed exemption is granted, such Stock will constitute no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. For example, Deutsche Bank AG Stock currently represents only .937% of the FTSE 100 Index, 1.382% of the MSCI EURO Index and .703% of the FTSE Eurotop 300 Index. Although some indexes include Deutsche Bank Stock in percentages that exceed three (3) percent of the index, Deutsche Bank does not currently utilize such indices for its Index and Model-Driven Funds with ''plan assets'' subject to the Act.

For purposes of future acquisitions and holdings of Deutsche Bank Stock by such Funds once this proposed exemption is granted, neither the

[9] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a ''qualified professional asset manager'' (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

[10] In this regard, the Department is providing no opinion herein as to whether such principal transactions would be covered by any existing exemption.

Deutsche Bank AG Stock nor the Deutsche Bank Affiliate Stock will constitute more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. In this regard, the Applicants have identified at least seven (7) indexes which include Deutsche Bank Stock where the current approximate capitalization weight of the index represented by Deutsche Bank Stock exceeds three (3) percent. The Applicants request that the proposed exemption allow Deutsche Bank to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track an index that contains Deutsche Bank Stock, or which transforms such an index in a model-prescribed way, as long as the Deutsche Bank Stock does not constitute more than five (5) percent of the index.[11]

With respect to an index's specified composition of particular stocks in its portfolio, the Applicants state that future Funds may track an index where the appropriate weighting for stocks listed in the index is not capitalization-weighted. However, the Applicants state that Funds maintained by DB Asset Managers and other Affiliates of Deutsche Bank may track indexes where the selection of a particular stock by the index, and the amount of stock to be included in the index, is not established based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Applicants request that the proposed exemption allow for Deutsche Bank Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. The Applicants represent that, in all instances, acquisitions or dispositions of Deutsche Bank Stock by a Fund will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based or, in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third-party data.

[11] The Applicants have identified certain independent third party indexes where the current approximate capitalization weight of the index represented by Deutsche Bank Stock exceeds five (5) percent. However, the Applicants have agreed to limit the prospective relief that would be provided by this proposed exemption to Index and Model-Driven Funds which track indexes where the specified composition of Deutsche Bank Stock in the index does not exceed five (5) percent of such index.

11. The Applicants state that plan fiduciaries independent of Deutsche Bank have authorized and will continue to authorize the investment of any plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank Stock, other than in the case of a Deutsche Bank Plan. The Applicants represent that no more than ten (10) percent of the assets of any Fund that acquires and holds Deutsche Bank Stock will be comprised of assets of any Deutsche Bank Plan for which Deutsche Bank exercises investment discretion.

12. The Applicants will appoint an independent fiduciary which will direct the voting of Deutsche Bank Stock held by the Funds. Currently, the independent fiduciary that directs the voting of Deutsche Bank Stock held by the Funds is Institutional Shareholders Services, Inc.

Deutsche Bank states that in all instances the independent fiduciary chosen to vote Deutsche Bank Stock for the Funds will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of institutional investors with large equity portfolios. The fiduciary will develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicants will provide the independent fiduciary with all necessary information regarding the Funds that hold Deutsche Bank Stock, the amount of Deutsche Bank Stock held by the Funds on the record date for shareholder meetings of the Applicants, and all proxy and consent materials with respect to Deutsche Bank Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Deutsche Bank Stock voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply the Applicants with such information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Deutsche Bank Stock, when voting such stock.

13. In summary, with respect to all acquisitions, holdings, and dispositions of Deutsche Bank AG Stock by the Funds since June 4, 1999, the Applicants represent that such transactions meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved is based on an Index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of the Deutsche Bank AG Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest;

(c) All aggregate daily purchases of Deutsche Bank AG Stock by the Funds do not exceed, on any particular day, the greater of: (i) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or (ii) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date;

(d) All purchases and sales of Deutsche Bank AG Stock occur either (i) on the Frankfurt Stock Exchange, a recognized securities exchange as defined herein, (ii) through an automated trading system (as defined herein) operated by a broker-dealer that is subject to regulation by the BAK, the BAWe, or another applicable regulatory authority (pursuant to the applicable securities laws), that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority;

(e) No transactions by a Fund involve purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(f) No more than five (5) percent of the total amount of Deutsche Bank AG Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by DB Asset Managers;

(g) Deutsche Bank AG Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of Deutsche Bank authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank AG Stock, other than with respect to plans maintained by Applicants and their affiliates; and

(i) A fiduciary independent of Deutsche Bank (*e.g.,* Institutional Shareholders Services, Inc.) directs the voting of the Deutsche Bank AG Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank Stock are required or permitted to vote.

With respect to all acquisitions, holdings, and dispositions of Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock by the Funds after this proposed exemption is granted, the Applicants represent that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section IV(c) above;

(b) The acquisition or disposition of Deutsche Bank Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest;

(c) Whenever Deutsche Bank Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (*i.e.,* a Buy-up), all acquisitions of Deutsche Bank Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Deutsche Bank Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of Deutsche Bank Stock by the Funds will not exceed, on any particular day, the greater of: (i) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or (ii) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Deutsche Bank Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, (ii) effected on an automated trading system operated by a broker-dealer subject to regulation by either the SEC, BAK, the BAWe, another applicable regulatory authority or by a recognized securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined herein) so long as the broker is acting on an agency basis.

(f) No transactions by a Fund will involve purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than five (5) percent of the total amount of either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by DB Asset Managers;

(h) Deutsche Bank Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Deutsche Bank will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank Stock pursuant to the procedures described herein, other than in the case of a Deutsche Bank Plan; and

(j) A fiduciary independent of Deutsche Bank will direct the voting of the Deutsche Bank Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank Stock are required or permitted to vote.

Notice to Interested Persons: Notice of the proposed exemption should be mailed by first class mail to interested persons, including the appropriate fiduciaries for employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold Deutsche Bank Stock. The notice should contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. All notices should be sent to interested persons within 15 days of the publication of this proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

In addition, Deutsche Bank shall provide a copy of the proposed exemption and, if granted, a copy of the final exemption upon request to all ERISA-covered plans that invest in any Index or Model-Driven Fund that will include Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock in its portfolio after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

American Express Financial Corporation Located in Minneapolis, Minnesota

[Application No. D–10855]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 4975(c)(2) of the Code, and section 8477(c)(3) of the Federal Employees Retirement System Act of 1986 (FERSA), and in accordance with the procedures set forth in 29 CFR Part

2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for the Acquisition, Holding and Disposition of American Express Company Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of the common stock of American Express Company or its current and future affiliates (AE Stock) by Index and Model-Driven Funds managed by American Express Financial Corporation (AEFC), provided that the following conditions and the general conditions in Section II are met:

(a) The acquisition or disposition of AE Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the AE Stock which is intended to benefit AEFC or any party in which AEFC may have an interest.

(b) Whenever AE Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of AE Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of AE Stock occur either (i) on a recognized U.S. securities exchange (as defined in section III(k) below), (ii) through an automated trading system (as defined in section III(j) below) operated by a broker-dealer independent of AEFC that is registered under the Securities Exchange Act of 1934 (the '34 Act), and thereby subject to regulation by the Securities and Exchange Commission (SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in section III(j) below) that is operated by a recognized U.S. securities exchange (as defined in section III(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of AE Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require AE Stock, AEFC appoints a fiduciary which is independent of AEFC to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of AE Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of AE Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the AE Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for AE Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in AE Stock not otherwise described in paragraph (b) above are either: (i) entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of AEFC and is registered under the '34 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in section III(j) below) operated by a broker-dealer independent of AEFC that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in section III(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in section III(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, AEFC (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of AE Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by AEFC.

(g) AE Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of AEFC authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds AE Stock (other than in the case of an employee benefit plan sponsored or maintained by AEFC for its own employees (an AEFC Plan)), pursuant to the procedures described herein.

(i) A fiduciary independent of the AEFC directs the voting of the AE Stock held by an Index or Model-Driven Fund on any matter in which shareholders of AE Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds AE Stock is comprised of any AEFC Plan(s) for which AEFC exercises investment discretion.

Section II—General Conditions

(a) AEFC maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the

conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AEFC, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than AEFC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of AEFC or commercial or financial information which is considered confidential.

Section III—Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by AEFC, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section III(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which AEFC does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit AEFC or any party in which AEFC may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by AEFC, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of AEFC, to transform an independently maintained Index, as described in Section III(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit AEFC or any party in which AEFC may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of AEFC; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of AEFC.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of AE Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term ''AEFC'' refers to American Express Financial Corporation and its Affiliates, as defined below in paragraph (g).

(g) The term ''Affiliate'' means, with respect to AEFC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by AEFC;

(h) An ''affiliate'' of AEFC includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(k) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the '34 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.,* 17 CFR Part 240.3b–16).

Summary of Facts and Representations

1. American Express Financial Corporation (the Applicant), a Delaware corporation, together with its subsidiaries is a financial advisor and provides a wide range of fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors.

The Applicant is wholly-owned by American Express Company. As of

December 31, 1998, American Express Company and its Affiliates had consolidated assets of $126.9 billion and total stockholders' equity of $9.698 billion. The Applicant is an investment manager of various portfolios subject to ERISA that are invested in a strategy that tracks or transforms an index maintained by a third party that includes the stock of American Express Company (*i.e.* AE Stock). The Applicant seeks exemptive relief to permit it and its Affiliates to maintain individual or collective investment funds that will acquire and hold any AE Stock issued by American Express Company or an Affiliate, if the conditions of the exemption are met. For the purposes of this proposed exemption, the Applicant requests that the relief apply to American Express Financial Corporation, American Express Company, and their respective current or future Affiliates (collectively referred to herein as ''AEFC'').

2. AEFC acts as investment manager of institutional accounts, including employee benefit plans, with assets totaling approximately $38.3 million. AEFC also provides directed trust or investment management services to various employee benefit plans. AEFC is, to the extent of the provision of investment management services, a fiduciary of these plans.

As a fiduciary, AEFC may be either directed by an independent plan fiduciary or plan participants that have the ability, under the plan document, to direct investments for their own plan accounts. Alternatively, in those cases in which AEFC manages the investments, the Applicant represents that AEFC does not exercise any discretionary authority over whether an employee benefit plan (other than an AEFC Plan) invests in particular Index or Model-Driven Funds.

The Applicant represents that no Index or Model-Driven Funds containing ''plan assets'' covered by the Act[12] have held such Stock. The Applicant also states that any exemptive relief for cross-trades of securities, including AE Stock, by Index and Model-Driven Funds maintained by AEFC should be considered separately.[13]

3. AEFC manages different collective investment funds in various ways to enable plan assets to be diversified to reduce risk and to be invested in types of investments that a particular manager for a plan may determine is appropriate at a particular time. Index Funds and Model-Driven Funds (*i.e.,* the Funds) are two examples of AEFC's collective investment funds which include plan investors.

4. An Index Fund may be a separately managed account or a collective investment fund, the objective of which is to track the rate of return, risk profile and other characteristics of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indices rather than according to active evaluation of the investments by the manager.

5. A Model-Driven Fund may be a separately managed account or a collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities.

6. The Applicant represents that the process for the establishment and operation of all Funds which are model-driven is very disciplined. Objective rules are established for each model. Such Funds operate pursuant to pre-specified computer programs and the rules and programs are changed only infrequently.

7. The Applicant currently offers more than 10 collective investment funds that are invested according to the criteria of various third-party indexes or are model-driven based on such indexes. For example, some Funds track the Russell 2000 Index,[14] while other Funds track the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).[15] Most of the Funds track stock indexes, although some Funds track indexes of debt securities, such as the Lehman Brothers Bond Indices.[16]

8. In addition to Funds that are collective investment funds, AEFC may have investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third-party index. The Applicant represents that the ability of all Funds to invest in the AE Stock would improve the tracking of such indexes.

9. The Applicant states that the proposed exemption is necessary to allow Funds holding ''plan assets'' to purchase and hold AE Stock in order to replicate the capitalization-weighted or other specified composition of AE Stock in an independently maintained third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.[17]

The Applicant represents that when the AE Stock is added to an index on which a Fund is based, or are added to the portfolio of a Fund which tracks an index that includes the AE Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of the AE Stock to its capitalization or other specified weighting in the applicable Index, will comply with conditions (see Section I(b)(1)–(7) above) which are designed to prevent possible market price manipulation and are based, in part, on the restrictions of SEC Rule 10b–18.[18]

Such acquisitions of AE Stock by a Fund are referred to herein as a ''Buy-

[12] See 29 CFR 2510.3–101; Definition of ''plan assets''—plan investments.

[13] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

[14] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of AEFC. The Russell 2000 Index is a subject of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly traded stocks of U.S. domiciled corporations, as identified by the Frank Russell Company, and includes large, medium and small stocks.

[15] The S&P Index is composed of 500 stocks that are traded on the New York Stock Exchange and the NASDAQ National Market System. The S&P 500 is a market value-weighted index (*i.e.* shares outstanding times stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

[16] The indexes of debt securities used for the Funds, such as the Lehman Brothers Bond Index, consist primarily of high-quality fixed-income securities representing the U.S. government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. The Applicant currently has two debt based Funds.

[17] The Applicant is not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of AE Stock by any AEFC Plans which invest in the Applicant's Index Funds. In this regard, such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department is not providing an opinion in this proposed exemption as to whether the conditions of section 408(e) of the Act would be met for such transactions.

[18] SEC Rule 10b–18 provides a ''safe harbor'' for issuers of securities from section 9(a)(2) of the Securities Exchange Act of 1934 and SEC Rule 10b–5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

up''.[19] The conditions required for a ''Buy-up'' of AE Stock are as follows:

(A) Purchases will be from or through only one broker or dealer on a single trading day;

(B) Based on the best available information, purchases will not be the opening transaction for the trading day;

(C) Purchases will not be effected in the last half hour before the scheduled close of the trading day;

(D) Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(E) Aggregate daily purchases will not exceed 15 percent of the daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(F) All purchases and sales of AE Stock will occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k)), (ii) through an automated trading system (as defined in Section III(j)) operated by a broker-dealer independent of AEFC that is registered under the 34 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section III(j) above) that is operated by a recognized U.S. securities exchange (as defined in Section III(k)), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(G) If the necessary number of shares of AE Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require AE Stock, AEFC will appoint a fiduciary which is independent of AEFC to design acquisition procedures and monitor AEFC's compliance with such procedures.

The independent fiduciary and its principals will be completely independent from AEFC. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of AE Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. The Applicant would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicant further expects that such a program will allow AEFC to acquire the necessary shares of AE Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor AEFC's compliance with the trading program and procedures developed for the initial acquisition of AE Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify AEFC should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with AEFC and must approve in advance any alteration of the trading procedures.

10. Subsequent to initial acquisitions necessary to bring a Fund's holdings of AE Stock to its specified weighting in the index or model pursuant to the restrictions described above, all aggregate daily purchases of AE Stock by the Funds will not exceed on any particular day the greater of:

(i) 15 percent of the average daily trading volume for the AE Stock occurring on the applicable exchange and automated trading system (as described herein) for the previous five (5) business days, or

(ii) 15 percent of the trading volume for AE Stock occurring on the applicable exchange and automated trading system (as described herein) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

11. All additional purchases or subsequent sales of the AE Stock by the Funds that are made on a daily basis merely to track an applicable Index or to conform to an applicable model would be accomplished either through cross-trade transactions, subject to the conditions of an applicable exemption,[20] or on the open market, subject to the conditions of this exemption. All such purchases and sales of the AE Stock shall be either: (1) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer,[21] in the ordinary course of its business, where such broker-dealer is independent of AEFC and is registered under the '34 Act, and thereby subject to regulation by the SEC; (2) effected on an automated trading system (as defined in Section III(j) above) operated by a broker-dealer independent of AEFC that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or an automated trading system operated by a recognized U.S. securities exchange (as defined above) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (3) effected through a recognized U.S. securities exchange (as defined in Section III(k) above) so long as the broker is acting on an agency basis.

However, daily purchases of AE Stock for a Fund, which occur after all acquisitions of such Stock have been made in order to bring the Fund's holdings to the capitalization or other specified weighting of the AE Stock in the index, would not be subject to the conditions required herein for a ''Buy-up'' period. In this regard, the Applicant

[19] The Applicant anticipates that generally acquisitions of AE Stock by an Index or Model-Driven Fund in a ''Buy-up'' will occur within 10 business days from the date of the event which causes the particular Fund to require AE Stock. AEFC does not anticipate that the amounts of AE Stock acquired by any Fund in a ''Buy-up'' will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any ''Buy-up'' of AE Stock.

[20] See footnote 2.

[21] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a ''qualified professional asset manager'' (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

states that the restrictions required for acquisitions of AE Stock during a ''Buy-up'' period are not necessary for the volume of transactions which are expected by a Fund for daily tracking of an index in order to respond to changes in the composition or weighting of the AE Stock in the index.

12. The Applicant represents that no more than 5 percent of the total outstanding shares of the AE Stock will be held in the aggregate by Index and Model-Driven Funds managed by AEFC. In addition, the Applicant states that the AE Stock will not constitute more than 5 percent of the value of any independent third-party index on which investments of an Index or Model-Driven Fund are based. Specifically, the Applicant represents that the current weighting of AE Stock in the S&P Index is .56 percent.

13. The Applicant states that plan fiduciaries independent of AEFC will authorize the investment of any plan's assets in an Index or Model-Driven Fund which purchases and/or holds AE Stock, pursuant to the procedures described herein. AEFC will also appoint an independent fiduciary which will direct the voting of any AE Stock held by the Funds. The independent fiduciary will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds, banks, trust companies, money managers, insurance companies and other institutional investors with large equity portfolios. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicant will provide the independent fiduciary with all necessary information regarding the Funds that hold AE Stock on the record date for shareholder meetings of AEFC, and all proxy and consent materials with respect to the AE Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of the shares of AE Stock voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply AEFC with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own the AE Stock, when voting such stock.

14. In summary, with respect to all acquisitions, holdings, and dispositions of AE Stock by the Funds, the Applicant represents that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section III(c) above;

(b) The acquisition or disposition of AE Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the AE Stock which is intended to benefit AEFC or any party in which AEFC may have an interest;

(c) Whenever AE Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (*i.e.*, a Buy-up), all acquisitions of AE Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of AE Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of AE Stock by the Funds will not exceed, on any particular day, the greater of:

(1) 15 percent of the average daily trading volume for the AE Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or

(2) 15 percent of the trading volume for AE Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in AE Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of AEFC and is registered under the '34 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of AEFC that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined herein) so long as the broker is acting on an agency basis.

(f) No transactions by a Fund will involve purchases from or sales to AEFC (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than five (5) percent of the total amount of AE Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by AEFC;

(h) AE Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of AEFC will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds AE Stock (other than in the case of an AEFC plan), pursuant to the procedures described herein; and

(j) A fiduciary independent of AEFC will direct the voting of the AE Stock held by an Index or Model-Driven Fund on any matter in which shareholders of AE Stock are required or permitted to vote.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Countrywide Securities Corporation (Countrywide) Located in Calabasas, California

[Application No. D–10863]

Proposed Exemption

I. Transactions

A. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the

initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[22]

B. Effective January 28, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[23] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 28, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[24]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling

[22] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[23] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[24] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) A Certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A Certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) that is issued by, and is an obligation of, a trust;

with respect to certificates defined in (1) and (2) above for which Countrywide or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. ''Underwriter'' means:

(1) Countrywide;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Countrywide; or

(3) Any member of an underwriting syndicate or selling group of which Countrywide or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the

certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. ''Rating Agency'' means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P) or Fitch IBCA, Inc. (Fitch) or their successors;

X. ''Capitalized Interest Account'' means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. ''Closing Date'' means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. ''Pre-Funding Account'' means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. ''Pre-Funding Period'' means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. ''Countrywide'' means Countrywide Securities Corporation and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

Summary of Facts and Representations

1. Countrywide is a California corporation, organized on November 4, 1981 as an indirect wholly-owned subsidiary of Countrywide Credit Industries, Inc. (CCI).[25] It is a registered broker-dealer and a member of both the National Association of Securities Dealers, inc. and the Securities Investor Protection Corporation. Countrywide primarily trades mortgage-related and other securities, including pass-through certificates issued by GNMA, FNMA and FHLMC, callable agency debt, and collateralized mortgage obligations. Countrywide also trades certificates of deposit issued by banks, the deposits of which are insured by the Bank Insurance Fund. It participates in the underwriting of securities for Countrywide Home Loans, Inc. (CHL), CWMBS, Inc., CWABS, Inc. and others. Countrywide trades with institutional investors, such as investment managers, pension fund companies, insurance companies, depositories, and other broker-dealers. It does not maintain retail accounts. Countrywide had total assets of $2.5 billion as of February 28, 2000, and CCI had total assets of $18.4 billion on May 31, 2000.

Countrywide maintains its principal offices in Calabasas, California and maintains a sales office in New York City. CCI, a Delaware corporation organized in 1969, acts as a holding company. Its principal office is also located in Calabasas, California.

CHL is a New York corporation organized in 1969 as a wholly-owned subsidiary of CCI. It is engaged primarily in the mortgage banking business, and originates, purchases, sells and services prime mortgage loans, sub-prime mortgage loans and home equity loans. It originates mortgage loans through a retail branch system and through mortgage loan brokers, and purchases loans originated by correspondents nationwide. It sells substantially all loans that it originates or purchases. In the fiscal year ending February 28, 1999, CHL originated or purchased over 800,000 loans with an aggregate principal amount of over $92 million. It also services on a non-recourse basis substantially all of the mortgage loans that it originates or purchases, and services loans originated by other lenders under bulk servicing contracts. At the end of the fiscal year ending February 28, 1999, the loans in CHL's servicing portfolio had a principal balance of more than $215 billion. CHL has its principal offices in Calabasas, California, and maintains approximately 500 branch offices in all 50 states.

CWMBS, Inc. is a Delaware corporation organized in 1993 for the

[25] The Department notes that it proposed exemptive relief for Countrywide (65 FR 51454) on August 23, 2000 in connection with the amendment of PTE 97–34. PTE 97–34 amended over 40 individual ''Underwriter Exemptions''. The proposed amendment of the individual Underwriter Exemptions, however, generally would be effective for transactions occurring on or after August 23, 2000. Since Countrywide requested an exemption based upon 97–34 with an effective date retroactive to January 28, 2000, the Department determined to publish this proposal with the earlier effective date.

limited purpose of acquiring, owning and transferring mortgage-related assets and selling interests in and bonds secured by those assets. It is a limited purpose financial subsidiary wholly-owned by CCI, and it maintains its principal office in Calabasas, California.

CWABS, Inc. is a Delaware corporation incorporated in 1996 for the limited purpose of acquiring, owning and transferring mortgage-related assets and selling interests in and bonds secured by those assets. It is a limited purpose finance subsidiary wholly-owned by CCI, and it maintains its principal office in Calabasas, California.

Trust Assets

2. Countrywide seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [26] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[27]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[28]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[29] The sponsor or servicer of a trust selects assets to be included in the trust.[30] These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[31]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

Countrywide, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated have been or are to be underwritten by Countrywide on a firm commitment basis. In addition, Countrywide anticipates that it may privately place certificates on both a firm commitment and an agency basis. Countrywide may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each Rating Agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Countrywide requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of

[26] The Department notes that PTE 83–1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Countrywide requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Countrywide has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[27] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of ''plan assets'' (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[28] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[29] The Department is of the view that the term ''trust'' includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[30] It is the Department's view that the definition of ''trust'' contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[31] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[32]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[33]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed-through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust (''FASIT''), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure with Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to Countrywide for cash or to the certificateholders directly if the certificates are sold through Countrywide as a placement agent. The cash received by the sponsor from the certificateholders (or Countrywide) for the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of the assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (*i.e.,* servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a

[32] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

[33] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the Rating Agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the Rating Agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivables affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency, as set forth in the pooling and servicing agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be

described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a Rating Agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the Rating Agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either (i) monitored by a credit support provider or other insurance provider which is independent of the sponsor, or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, Countrywide and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

12. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Countrywide, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). Countrywide represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of

different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (*i.e.*, Countrywide, its affiliate, or a member of an underwriting syndicate or selling group of which Countrywide or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to Countrywide. In other cases, however, affiliates of Countrywide may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[34] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would

[34] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent

accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, any material risk factors with respect to the certificates, and the fact that principal amounts left in the pre-funding account at the end of the pre-funding period will be paid to certificateholders as a repayment of principal;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects, and a description of any pre-funding account used or capitalized interest account used in connection with a pre-funding account;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. To date, no forward delivery commitments have been entered into by Countrywide in connection with the offering of any certificates, but Countrywide may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and Countrywide may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. It is Countrywide's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Countrywide's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times Countrywide will facilitate

sales by investors who purchase certificates if Countrywide has acted as agent or principal in the original private placement of the certificates and if such investors request Countrywide's assistance.

Retroactive Relief

30. Countrywide represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, Countrywide requests the exemptive relief granted to be retroactive to January 28, 2000, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

31. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which Countrywide seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) Countrywide anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons: The applicant represents that any securities offered in reliance upon the proposed exemption prior to the date the final exemption is published in the **Federal Register** shall disclose in the offering memorandum or prospectus:

(a) The availability of the proposed exemption; (b) the right of potentially interested plan fiduciaries to comment on the proposed exemption; and (c) information on how an interested plan fiduciary can obtain a copy of the proposed exemption (once it is available) from Countrywide.

Once this proposed exemption is granted, a copy of the exemption published in the **Federal Register** shall be distributed to any current or prospective plan investor in a security offered in reliance upon the exemption upon request of such investor, and each offering memorandum or prospectus offering securities in reliance upon the exemption shall describe and disclose the availability of the exemption.

Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Maple Partners Financial Group, Inc. (Maple); Located in Toronto, Ontario, Canada

[Application No. D–10905]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[35]

[35] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Section I—Transactions

A. If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective May 31, 2000, to any purchase or sale of securities between certain non-U.S. affiliates of Maple, which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, Maple, or a Foreign Affiliate, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

B. If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective May 31, 2000, to any extension of credit to the Plan by the Foreign Affiliate, to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets

involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective May 31, 2000, to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings) [36] had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) three business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded; [37]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes

[36] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

[37] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption, if granted;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period; and

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph D unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term ''affiliate'' of another person shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term ''Foreign Affiliate'' shall mean an affiliate of Maple that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, *i.e.*, der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany, and the Federal Securities Trading Supervisory Commission, Bundesaufsichtsamt fur den Wertpapierhandel (the BAWe); and

C. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

Effective Date: This proposed exemption, if granted, will be effective as of May 31, 2000.

Summary of Facts and Representations

1. Maple is a holding company formed under the laws of the Province of New Brunswick, Canada. Maple is the parent company of Maple Partners U.S.A. Inc. (MPUSA), a Delaware corporation and a broker-dealer registered with the SEC pursuant to Section 15 (b) of the 1934 Act. MPUSA is a full-line investment and financial services company which is a member of the National Association of Securities Dealers, Inc. (the NASD) and the Chicago Board Options Exchange, Inc.[38] As of September 30, 1999, Maple had (in U.S. dollars) approximately $11.3 billion in assets under management, and $284 million in business capital.

Maple has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (*i.e.*, the Foreign Affiliates), and their respective regulating entities, are as follows:

(a) *Maple Partners Financial Products Limited,* located in Toronto, Ontario, is subject to regulation in Canada by the Ontario Securities Commission, as well as the Investment Dealers Association and the Toronto Stock Exchange, both self-regulatory organizations;

(b) *Maple Partners (U.K.) Limited,* located in London, England, is subject to regulation in the United Kingdom by the Securities and Futures Authority, as well as the London Stock Exchange, the Tradepoint Investment Exchange and the London-based Swedish Options Exchange, all of which are self-regulatory organizations;

(c) *Maple Partners Bankhaus GmbH (MPBG),* located in Frankfurt, is subject to regulation in Germany by the Federal Supervisory Office, Bundesaufsichtsamt fur das Kreditwesen (*i.e.*, the BAK), and the Federal Securities Trading Supervisory Commission, Bundesaufsichtsamt fur den Wertpapierhandel (*i.e.*, the BAWe).

Maple requests an individual exemption to permit the Foreign Affiliates identified above, as well as those other affiliates of Maple who, in the future, may be subject to governmental regulation in Canada, the United Kingdom or Germany, to engage in the securities transactions described below with employee benefit plans (*i.e.*, the Plans). The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

[38] Maple also owns Maple Arbitrage Inc. (MAI), a Delaware corporation and a broker-dealer registered with the SEC under the 1934 Act. MAI is a member of the NASD. MAI engages mainly in trading and securities lending activities for its own account.

2. Maple represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. Maple further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets.

Canada and the United Kingdom each have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that German banks have procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of German banks, such as MPBG, by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information from German banks, such as MPBG, regarding capital adequacy, country risk exposure, and foreign exchange exposure. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

The distribution and trading of securities in Germany is governed by the Stock Corporation Act (Aktiengesetz), the Stock Exchange Code (Borsengesetz), and the Securities Trading Act, as amended (Wertpapierhandelsgesetz). The Stock Exchange Code involves a three-tier supervisory system—federal, state and private exchanges. The BAWe has been given broad powers to investigate and prosecute various securities trading violations.

Maple represents that, in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a-6 [17 CFR 240.15a-6(1999)] of the 1934 Act (as discussed further in Paragraph 6, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. Maple represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers or banks and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. Maple represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

Maple requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 75–1 (PTE 75–1, 40 FR 50845, October 31, 1975), Part II.[39] Maple states that because PTE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the principal transactions at issue would fall outside the scope of relief provided by PTE 75–1.[40]

4. Maple represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, the Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTE 75–1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer or bank. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in the principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (i.e., a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. Maple represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

[39] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[40] PTE 75–1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term ''major U.S. institutional investor,'' as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[41] The intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Maple represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) Maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;[42] and

(6) Participating in certain oral communications (*e.g.,* telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

Extensions of Credit

7. Maple represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including employee benefit plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary three-day settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

Maple requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTE 75–1, Part V, only for transactions between plans and U.S. registered brokers or dealers.[43]

8. Under the conditions of this proposed exemption, as in PTE 75–1, Part V, the Foreign Affiliate may not be a fiduciary with respect to the Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTE 75–1, if no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Maple requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in PTE 81–6 (*see* Footnote 2). Because PTE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTE 81–6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. Maple represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (*e.g.,* from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually

[41] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[42] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.,* clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[43] PTE 75–1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered brokers or dealers that are parties in interest with respect to such plans.

is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day preceding the day it is posted by the Foreign Affiliate, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same). (As is customary in the industry, the Foreign Affiliates typically provide collateral of between 102 and 105 percent of the market value of the loaned securities.)

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of any applicable tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate will deliver additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering into a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary, who makes a decision whether to lend the Plan's securities, (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) three business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or alternatively, such period as permitted by PTE 81–6, as it may be amended or superseded. In the event that the Foreign Affiliate fails to return the securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral (the value of which shall be determined as of the date the borrowed securities should have been returned to the Plan), plus interest at a reasonable rate as determined in accordance with an independent market source. If replacement securities are not available, the Foreign Affiliate will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan, plus (b) all the accrued financial benefits derived from the beneficial ownership of such borrowed securities as of such date, plus (c) interest at a reasonable rate determined in accordance with an independent market source from such date to the date of payment. The amounts paid shall be reduced by the amount or value of the collateral determined as of the date the borrowed securities should have been returned to the Plan. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act [44] and the regulations promulgated under 29 CFR 2550.404(b)–1.

20. In summary, the applicant represents that the subject transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

[44] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

(a) With respect to the principal transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers or U.S. banks, pursuant to PTE 75–1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign Affiliate's business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of option contracts, for transactions between Plans and U.S. registered brokers or dealers, pursuant to PTE 75–1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between Plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTE 81–6; and

(d) The proposed exemption will provide the Plans with virtually the same protections as those provided by PTE 75–1 and PTE 81–6.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of September, 2000.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits, Administration.

[FR Doc. 00–23824 Filed 9–18–00; 8:45 am]

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Federal Register

Tuesday,
September 19, 2000

Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts Energy Conservation Standards; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN 1904–AA75

Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) has determined that revised energy conservation standards for fluorescent lamp ballasts will result in significant conservation of energy, are technologically feasible, and are economically justified. On this basis, the Department is today amending the existing energy conservation standards for fluorescent lamp ballasts as proposed and as recommended by stakeholders.

EFFECTIVE DATES: The effective date of this rule and the standards is April 1, 2005.

ADDRESSES: A copy of the Technical Support Document (TSD) may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: the Codes and Standards Internet site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/ballast.html or from the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, S.W., Washington, D.C. 20585. (202) 586–9127.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–9127, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9507.

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I. Introduction

a. Overview

The Energy Policy and Conservation Act, as amended, specifies that the Department must consider for amended standards those standard levels that ''achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified'' and which will ''result in significant conservation of energy.'' 42 U.S.C. 6295. Consistent with these statutory requirements, DOE today is amending the energy conservation standards for fluorescent lamp ballasts for commercial and industrial applications.

When today's standards go into effect, they will essentially require fluorescent lamp ballasts for F40 and F96 lamps to be the electronic type. The standards will segment the market into new applications and replacement applications and extend the implementation dates to mitigate the burdens to acceptable levels. The standards provide a phase-in period of approximately five years, until April 1, 2005, for new applications. In addition, today's rule provides an additional phase in, until June 30, 2010, for ballasts intended for the replacement market. Replacement ballasts must be labeled for replacement use, have output leads which, when fully extended, are less than the length of the lamp it is intended to operate and be shipped in packages of ten or less.

Today's rule exempts ballasts designed for residential applications, ballasts capable of being dimmed to 50 percent or less of its maximum output, and ballasts for use with two F96T12HO lamps at an ambient temperature of − 20°F used with outdoor signs.

As a result of today's rule, we estimate the cumulative national energy savings ranging from 1.20 to 2.32 Quads of energy for the period 2005 through 2030. These energy savings will result in carbon emission reductions of 11 to 19 million metric tons and NO_X emission reductions of 34 to 60 thousand metric tons, during the same time frame. We believe most commercial and industrial consumers will save money. In total, we estimated the energy savings to have a net present value to American business and industry of 1.42 to 2.60 billion dollars.

b. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, by the National Appliance Energy Conservation Act, Public Law 100–12, by the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as ''covered products'') include fluorescent lamp ballasts.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

National Institute of Standards and Technology, amends or establishes new test procedures for each of the covered products. Section 323. Test procedures appear at 10 CFR Part 430, Subpart B.

The Federal Trade Commission (FTC) prescribes rules governing the labeling of covered products after DOE publishes test procedures. Section 324(a). At the present time, there are Federal Trade Commission rules requiring labels for fluorescent lamp ballasts.

The National Appliance Energy Conservation Amendments of 1988 prescribed Federal energy conservation standards for ballasts. Section 325(g). The Act specifies that the standards are to be reviewed by the Department no later than January 1, 1992. Section 325(g)(7)(A).

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(o)(2)(A).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

''(i) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(ii) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(iii) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(iv) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(v) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(vi) The need for national energy conservation; and

(vii) Other factors the Secretary considers relevant.''

In addition, section 325(o)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.'' The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act. Section 327(a)–(c).

c. Background

The National Energy Conservation Policy Act,[2] which amended the Energy Policy and Conservation Act, required DOE to establish mandatory energy efficiency standards for each of the 13 covered products. These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

The National Energy Conservation Policy Act provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended the Energy Policy and Conservation Act in part by: redefining ''covered products'' (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine if an amended standard is required. It also established the rebuttable presumption test of economic justification.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if any amended standard for fluorescent lamp ballasts is required.

The Energy Policy Act of 1992, which became law on October 24, 1992, addressed various commercial appliances and equipment.

As directed by the Act, DOE published an advance notice of proposed rulemaking for fluorescent lamp ballasts, as well as a variety of other consumer products. (55 FR 39624, September 28, 1990). The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking.

Pursuant to section 325 of the Act, DOE proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts, as well as a variety of other consumer products. 59 FR 10464 (March 4, 1994). On January 31, 1995, the Department published a Rulemaking Determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. 60 FR 5880 (January 31, 1995).

A moratorium was placed on publication of proposed or final rules for appliance efficiency standards as part of the FY 1996 appropriations legislation. Public Law 104–134. That moratorium expired on September 30, 1996.

On July 15, 1996, the Department published a Process Improvement Rule establishing procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products). 61 FR 36974.

The Department conducted numerous meetings, workshops and discussions regarding energy efficiency standards for fluorescent lamp ballasts resulting in the publication of a Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts, July, 1997; a Summary of Inputs for the Technical Support Document: Energy Efficiency Standards for Fluorescent Lamp Ballasts, April 20, 1998; and a Ballast Manufacturer Impact Analysis Analytical Approach, April 10, 1998. 62 FR 38222 (July 17, 1997) and 63 FR 16706 (April 6, 1998). A workshop was conducted on these analyses and documents on April 28,

[2] The consumer products covered by the National Energy Conservation Policy Act included: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

1998. 63 FR 16706 (April 6, 1998). Based on comments and the growing popularity of electronic ballasts with T8 lamps, the Department solicited further comments specifically on the issue of whether market shifts (*e.g.,* from T12 to T8 lamps) should be considered in determining the impact of an energy conservation standard on commercial and industrial consumers, manufacturers and the nation. 63 FR 58330 (October 30, 1998). Further comments on the above analyses, and modifications resulting from those comments, culminated in publishing a revised analysis on the Codes and Standards internet site (http://www.eren.doe.gov/buildings/codes__standards/applbrf/ballast.html) in April of 1999. We also conducted a workshop reviewing this analysis on June 1, 1999. 64 FR 24634 (May 7, 1999). On the basis of comments received on these documents, DOE reviewed its analysis and prepared a TSD which also was placed on the above Codes and Standards internet site.

On October 12 and 13, 1999, the National Electrical Manufacturers Association convened a meeting where its members negotiated with representatives of the American Council for an Energy Efficient Economy, the Natural Resources Defense Council, the Alliance to Save Energy and the Oregon Energy Office to produce a joint comment proposal for amended fluorescent lamp ballast standards. (Hereafter referred to as the Joint Comment.) The Department was invited and attended as an observer. We evaluated the impacts of the joint comment proposal and issued a proposed rule based on those comments. 65 FR 14128 (March 15, 2000). (Hereafter referred to as the Proposed Rule.) A public hearing on the proposed rule was held in Washington, D.C. on April 18, 2000.

II. General Discussion

a. Test Procedures

The Act provides that no standard for a product be established if there is no test procedure for the product. The Amendments of 1988 set forth test procedures and energy conservation standards for fluorescent lamp ballasts. Based upon the Amendments of 1988, the Department published the Federal test procedures for fluorescent lamp ballasts. 56 FR 18682 (April 24, 1991). As of the effective date of the extant energy conservation standards (ballasts manufactured on or after January 1, 1990; sold by the manufacturer on or after April 1, 1990; or incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991), all ballasts, be they energy efficient magnetic, cathode cutout or electronic, for use in connection with F40T12, F96T12 or F96T12HO lamps, are required to meet a ballast efficacy factor as measured by the Federal test procedures. No one has petitioned DOE indicating the Department's test procedures are inadequate for testing fluorescent lamp ballasts using the above technologies. Since these are the same technologies considered in today's final rule, the Department considers the current Federal test procedures applicable and appropriate for today's final rule. Furthermore, stakeholders commenting in the Joint Comments stated that they consider the current Federal test procedures applicable and appropriate for their recommended ballast standards. (Joint Comment, No. 91 at 6).

b. Technological Feasibility

1. General

There are lamp ballasts in the market at all of the efficiency levels prescribed in today's final rule. The Department, therefore, believes all of the efficiency levels contained in today's final rule are technologically feasible.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in considering any new or amended standards, to consider those that ''shall be designed to achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (Section 325 (o)(2)(A)). Accordingly, for each class of product considered in this rulemaking, a maximum technologically feasible (max tech) design option was identified and considered as discussed in the Proposed Rule. 65 FR 14128, 14130 (March 15, 2000).

c. Energy Savings

1. Determination of Savings

The Department forecasted energy savings through the use of a national energy savings (NES) spreadsheet as discussed in the Proposed Rule. 65 FR 14128, 14131 (March 15, 2000).

2. Significance of Savings

Under section 325(o)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant'' energy savings. While the term ''significant'' has never been defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), concluded that Congressional intent in using the word ''significant'' was to mean ''non-trivial.''

d. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(o)(2)(B)(iii) states:

> ''If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.''

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified. This presumption of economic justification can be rebutted upon a proper showing.

e. Economic Justification

As noted earlier, Section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

We considered the economic impact on manufacturers and consumers as discussed in the Proposed Rule. 65 FR 14128, 14132 (March 15, 2000).

2. Life-Cycle Costs

We considered life cycle costs as discussed in the Proposed Rule. 65 FR 14128, 14132 (March 15, 2000).

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products and by providing exemptions, the Department has eliminated any degradation of utility or performance in the products in today's final rule.

An issue of utility that was considered was the possibility of interference with certain equipment, such as medical monitoring equipment, caused by the high frequency of electronic ballasts. To prevent any interference that cannot be solved by electronic ballast designers, the Department is not establishing a standard for T8 ballasts, thereby allowing magnetic T8 ballasts for such applications.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department provided the Attorney General with copies of the Proposed Rule and the Technical Support Document for review. In a letter responding to the Proposed Rule, the Attorney General concluded ''that the proposed standards would not adversely affect competition in the ballast market.'' (Department of Justice, No. 99). The letter is printed at the end of today's rule.

6. Need of The Nation To Conserve Energy

We reported the environmental effects from today's final rule in the Proposed Rule. 65 FR 14128, 14153 (March 15, 2000).

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. Under this factor, the Secretary has decided to consider the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase electronic ballasts, would choose to switch from T12 to T8 lighting systems. This analysis is part of the Department's continuing effort to study the economic impact of standards on consumers. While the Department does not believe it can set standard levels based on consumer purchasing behavior given the findings of the court in *Natural Resources Defense Council* v. *Herrington,* 768 F. 2d 1355, 1406–07 (D.C. Cir. 1985), where the court stated that ''the entire point of a mandatory program was to change consumer behavior'' and ''the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct,'' the Department considered the impact of likely consumer actions.

The Secretary also has strongly considered the Joint Comment. The Joint Comment segments the ballast market by defining replacement ballasts and proposed extended implementation dates for all segments of the ballast market to comply with the new standards. The Joint Comment also includes certain exemptions. All of these applications are oriented toward mitigating financial impacts on manufacturers and ensuring a minimal level of disruption to the ballast replacement marketplace.

III. Methodology

As discussed in the Proposed Rule, the Department developed new analytical tools for this rulemaking. The first tool was a spreadsheet that calculates Life-Cycle-Cost (LCC) and Payback. The second calculates national energy savings (NES). The Department also completely revised the methodology used in assessing manufacturer impacts including the adoption of the Government Regulatory Impact Model (GRIM). Additionally, DOE developed a new approach using the National Energy Modeling System (NEMS) to estimate impacts of ballast energy efficiency standards on electric utilities and the environment. 65 FR 14128, 14133–35 (March 15, 2000).

IV. Discussion of Comments

As noted above, DOE proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts on March 4, 1994. On January 31, 1995, the Department published a rulemaking determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. Since that time, the Department conducted numerous meetings, workshops and discussions regarding energy efficiency standards for fluorescent lamp ballasts, resulting in a Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts, July, 1997; Summary of Inputs for the Technical Support Document: Energy Efficiency Standards for Fluorescent Lamp Ballasts, April 20, 1998; and Ballast Manufacturer Impact Analysis Analytical Approach, April 10, 1998. 62 FR 38222 (July 17, 1997) and 63 FR 16706 (April 6, 1998). A workshop was conducted on these analyses and documents on April 28, 1998. 63 FR 16706 (April 6, 1998). Based on comments and the growing popularity of electronic ballasts with T8 lamps, the Department solicited further comments specifically on the issue of whether market shifts (*e.g.,* from T12 to T8 lamps) should be considered in determining the impact of an energy conservation standard on commercial and industrial consumers, manufacturers and the nation. 63 FR 58330 (October 30, 1998). Further comments on the above analyses, and modifications resulting from those comments, culminated in publishing an analysis on the Codes and Standards Internet site (http://www.eren.doe.gov/buildings/codes__standards/applbrf/ballast.html) in April of 1999. We also conducted a workshop on that analysis on June 1, 1999. 64 FR 24634 (May 7, 1999). These analyses presented the impacts of standards on consumers, the nation and manufacturers. The Department considered all comments regarding this rulemaking made prior to the three documents and posted revised analyses listed above, to have been resolved or contained within comments pertaining to those documents. Therefore, in the Proposed Rule, the Department only addressed comments made relative to those documents. Additionally, the National Electrical Manufacturers Association (NEMA), the American Council for an Energy Efficient Economy (ACEEE), the Natural Resources Defense Council (NRDC), the Alliance to Save Energy (Alliance) and the Oregon Energy Office (Oregon) submitted a joint comment for amended fluorescent lamp ballast standards. (Joint Comment, No. 91).

The Joint Comment presented the Department with a proposal for segmenting the market and extending the implementation dates to mitigate the burdens to acceptable levels while maintaining most of the benefits of standards. For example, the phase-in period for the standards proposed in the Joint Comment is approximately five years, until April 1, 2005. This allows the manufacturers and the marketplace additional time to make an orderly transition from energy efficient magnetic ballasts to the more efficient ballasts. In addition, the Joint Comment proposed an additional five-year phase-in for standards for ballasts intended for replacement market. While it is generally impossible to distinguish a ballast for the replacement market from one used in new construction or

renovation, the Joint Comment recommended that replacement ballasts be labeled for replacement use, have output leads which, when fully extended, are less than the length of the lamp it is intended to operate and they are shipped in packages of ten or less. In addition to the above, the Joint Comment also proposed limiting the exemptions relative to the extant standards. For example, the standards found in the National Appliance Energy Conservation Amendments of 1988 provided exemptions for cold temperature and dimming ballasts. The Joint Comment proposed limiting the exemption for cold temperature ballasts to those capable of being dimmed to 50 percent or less of its maximum output and the cold temperature ballast exemption would be limited to ballasts for use with two F96T12HO lamps at an ambient temperature of −20° F and which is for use with outdoor signs.

While these stakeholders had previously commented on the above three documents and the web posting, the Department stated in the Proposed Rule, that based on their joint comment, the Joint Comment superceded their previous comments. Therefore, their previous comments were not addressed in the Proposed Rule.

NEMA, supported by MagneTek, Advance Transformer, OSRAM SYLVANIA, Power Lighting Products and Robertson Worldwide, testified at the Proposed Rule public hearing that they support the energy conservation standards contained in the Proposed Rule and requested that DOE issue those proposed energy conservation standards. They also stated the submission of the Joint Comment does not and should not supersede their previous comments. (NEMA, No. 95CC; MagneTek, No. 95BB; Advance, No. 95DD; OSRAM, No. 95HH; Power Lighting, No. 95GG; Robertson, No. 95FF). NEMA stated and commented that they are not requesting any revisions to the TSD, but are requesting that DOE acknowledge that there are differences of opinion regarding the derivation of certain inputs to the TSD. NEMA mentioned four items in particular: end-user ballast prices, electricity prices for magnetic ballast users, comparing T12 systems to T8 systems and comparing fixtures that use one ballast to fixtures that use more than one ballast. (NEMA, No. 99 at 3).

ACEEE commented it supports the Proposed Rule. While fully supporting the Proposed Rule, ACEEE also stated that it questions some aspects of the analysis as stated in its previous comments. ACEEE specifically stated that it believes the manufacturer impact analysis significantly overstates the impacts on manufacturers and that it disagrees with the comments raised by NEMA. However, ACEEE is not asking for any revisions to the analysis, but that DOE should merely note the items that are in question. (ACEEE, No. 96).

NRDC commented that it supports the Proposed Rule and, while it does not endorse all of the steps of the analysis, it stated that DOE was correct in responding only to the Joint Comment. (NRDC, No. 97).

In a consensus process all parties typically give ground on positions held to arrive at a mutually agreeable outcome. Based on previous comments, we believed this to be the case for the stakeholders in this rulemaking in arriving at the recommended standards in the Joint Comments. For example, some stakeholders had previously commented that the ballast prices used in the Department's analysis were too high, and some had previously commented that the ballast prices used were too low. Since these stakeholders had agreed to a common overall position in the Joint Comments, we believed it unnecessary to the discuss the details of their previous disagreeing comments. However, the Department acknowledges that there are differences of opinion on the various inputs and details of the analysis contained in the TSD including the four areas mentioned by NEMA.

The Department acknowledges end-user ballast prices are difficult to obtain since ballasts are part of lighting systems. However, the Department believes the end-user ballast prices used in the TSD are the best available and that the range of prices used represent a reasonable range of ballast prices paid by end-users. The Department acknowledges NEMA and ACEEE disagree with the prices used.

The Department examined state by state shipment data and electric prices submitted by NEMA and, after running a regression analysis on the data, found extremely low correlation between the magnetic/electronic ballast mix and state electricity price. Therefore, we did not discriminate between types of ballast users and ranges of electricity prices. The Department acknowledges NEMA continues to believe magnetic ballast users enjoy lower electricity prices than electronic ballast users.

The Department did report and consider the impacts of consumers switching from T12 systems to T8 systems and from multiple magnetic ballast fixtures to single electronic ballast fixtures. The Department continues to believe that is the way many consumers will respond to today's standard. The Department acknowledges NEMA's belief those comparisons should not be made in the rule.

In addition to the above four items, Advance also commented that there is undue emphasis in the Proposed Rule on a scenario in which a major U.S. ballast factory is closed in the base case. Advance asks DOE to rephrase its comments on this sensitivity analysis. (Advance, No. 95DD).

Based on the dwindling U.S. ballast manufacturing job market from 1996, when NEMA testified before the U.S. House of Representatives Subcommittee on Energy and Power that 4,000 U.S. ballast manufacturing jobs would be at risk from an electronic ballast rule, to 1998, when the Department conducted its MIA and found only 738 U.S. ballast manufacturing jobs exist, it seemed reasonable to consider a sensitivity scenario where such job loss continued. However, no undue emphasis was placed on this scenario, and the Department acknowledges there is no testimony or evidence that Advance would close its major U.S. ballast factory and that the scenario is hypothetical.

Additionally, the Department asked for comments in the Proposed Rule on two issues to which NEMA responded. (NEMA, No. 98 at 4). The first issue was the validity of the analytical method used in the Proposed Rule to determine the impact of the standard on the national demand for labor. NEMA believes the method is inaccurate and that it is extremely difficult to make predictions regarding how expenditures in various sectors of the economy will result in labor demand 10 to 30 years in the future. The Department will continue to explore this issue in other rules in an effort to capture the total employment impact of energy conservation standards, both on manufacturers and the nation at large.

The second issue was how the Proposed Rule could have been written to make it easier to understand. NEMA stated that the Proposed Rule was well written and easy to understand if the party reading it had technical knowledge of the subject and that the style was an improvement over past Federal Register notices.

V. Analytical Results and Conclusion

Analytical Results

The Department presented the results of its analytical analysis, which was based on the Joint Comment, as discussed in the Proposed Rule, and no changes have been made to the analysis

for today's final rule. 65 FR 14128, 14141–54 (March 15, 2000).

The rulemaking process is such that months to years can take place between the time an analysis is completed and a final rule, based on that analysis, is issued. During that time span, conditions or data are likely to change and the Department attempts to insure that any such changes will not compromise the robustness of the analysis or lead to a different conclusion. For example, the Proposed Rule used the 1999 Annual Energy Outlook forecast of electric prices and electrical generation mix to determine energy savings and net present value. Since the analysis was completed, the 2000 AEO forecast became available. The Department examined the impact of the 2000 AEO forecast on energy savings and net present value and found its impact on energy savings would be to change the range of energy savings reported in the Proposed Rule of 1.20 to 2.32 Quads to 1.23 to 2.39 Quads and the range of net present values reported in the Proposed Rule of 1.42 to 2.60 billion dollars to 1.42 to 2.62 billion dollars. The Department does not consider these changes to be meaningful or a basis to revise the analysis. Additionally, it would be unfair and incorrect to select only one portion of the analysis for revision, such as the electric price, without also examining other related inputs, such as equipment prices, which also might have slightly changed.

There also are other changes which have occurred, possibly in response to the Proposed Rule, which would probably somewhat revise the numerical results of a revised analysis. For example, OSRAM SYLVANIA has purchased the Motorola Lighting Division which would probably slightly change a revised MIA. However, the Department believes no changes to the MIA are warranted because of this change since OSRAM SYLVANIA supported today's final rule at the public hearing, which occurred after the purchase. While the Department acknowledges that the analysis performed for the Proposed Rule does not fully reflect some of the changes in the industry and energy markets that have occurred more recently, the Department believes that this analysis is still a valid basis for today's final rule.

Conclusion

Section 325(l) of the Act specifies that the Department must consider, for amended standards, those standards that ''achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified'' and which will ''result in significant conservation of energy.'' Accordingly, the Department first considered the benefits and burdens of the max tech level of efficiency, *i.e.*, electronic ballast standards. Furthermore, in considering this standard level, the Department considered the staggered implementation scheme and exemptions recommended in the Joint Comments.

The Department concludes that an electronic ballast standard saves a significant amount of energy. The energy savings reported in the Department's analysis for an electronic ballast standard based on the Joint Comments ranged between 1.20 to 2.32 Quads of energy, not including the HVAC effects. The Department considers energy savings within this range to be significant. Furthermore, these energy savings are estimated to result in carbon emission reductions of 11 to 19 million metric tons and NO_X emission reductions of 34 to 60 thousand metric tons.

The Department concludes that an electronic ballast standard is technologically feasible as these products are currently available and comprise roughly half of the market.

In determining the economic justification of the Proposed Rule, which is the same as today's final rule, the Department considered the burdens and benefits of an electronic ballast standard. 65 FR 14128, 14154 (March 15, 2000).

The burdens accrue to the manufacturers of magnetic ballasts, some of their suppliers and employees, and to some commercial and industrial consumers who, because of factors such as lower than average electric costs or hours of operation, will experience increased life cycle costs. The largest of these burdens accrue to the manufacturing sector. In the Proposed Rule, the Department estimated that businesses involved in the ballast industry would have net losses of between 47.4 and 121.4 millions of dollars of NPV as a result of electronic standards starting in the year 2003.

On the other hand, most commercial and industrial consumers will benefit from lower life cycle costs due to energy savings. In the Proposed Rule, the Department estimated the value to society of these savings to range from 2.43 to 3.86 billions of dollars of NPV as a result of electronic standards starting in the year 2003. These savings to the nation's businesses and industries potentially produce increased jobs in the economy at large and the energy savings result in reduced atmospheric emissions.

The Department gave considerable weight to the recommendations of the Joint Comment which attempts to balance these burdens and benefits. The Joint Comment proposal reduces energy savings by approximately 24 percent compared to the Department's analysis. These reductions come mainly from delaying the effective dates of the standards from the year 2003 to 2005 and later for replacement ballasts. However, these same extensions also reduce the impacts of the standards on manufacturers from what the Department estimated to levels which the manufacturers state are mitigated. (Joint Comment, No. 91 at 7). While the Department did not revise the MIA for the Proposed Rule or today's final rule, we believe the manufacturers' statement in the Joint Comment, that the impacts on them from the proposal are mitigated, is sufficient to conclude that, given the benefits, the standards in today's final rule are economically justified.

The Energy Policy and Conservation Act directs the Department to consider the impact of any lessening of competition that is likely to result from the standards, as determined by the Attorney General. In a letter responding to the Proposed Rule, the Attorney General concluded ''that the proposed standards would not adversely affect competition in the ballast market.'' (Department of Justice, No. 99).

After carefully considering the analysis, comments and benefits versus burdens, the Department is amending the energy conservation standards for fluorescent lamp ballasts as proposed in the Proposed Rule. The Department concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, the Department finds that the benefits of energy savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions resulting from the standards outweigh the burdens of the loss of manufacturer net present value, possible plant closings and job loss and consumer life cycle cost increases for some users of fluorescent lamp ballasts covered by today's Final Rule.

VI. Procedural Issues and Regulatory Review

a. Review Under the National Environmental Policy Act

In issuing the March 4, 1994 Proposed Rule for energy efficiency standards for

eight products, one of which was fluorescent lamp ballasts, the Department prepared an Environmental Assessment (EA) (DOE/EA–0819) that was published within the Technical Support Document for that Proposed Rule. (DOE/EE–0009, November 1993.) We found the environmental effects associated with various standard levels for fluorescent lamp ballasts, as well as the other seven products, to be not significant, and we published a Finding of No Significant Impact (FONSI). 59 FR 15868 (April 5, 1994).

In conducting the analysis for the Proposed Rule, upon which today's final rule is based, the Department evaluated design options as suggested in comments. As a result, the energy savings estimates and resulting environmental effects from revised energy efficiency standards for fluorescent lamp ballasts in that analysis differ somewhat from those that we presented for fluorescent lamp ballasts in the 1994 Proposed Rule. Nevertheless, the environmental effects expected from today's final rule fall within ranges of environmental impacts from the revised energy efficiency standards for fluorescent lamp ballasts that DOE found in the FONSI not to be significant.

b. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's regulatory action has been determined to be an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

The draft submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, telephone (202) 586–3142.

The Proposed Rule contained a summary of the Regulatory Analysis which focused on the major alternatives considered in arriving at the approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft ''Regulatory Impact Analysis,'' which is contained in the TSD, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

c. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

The Standard Industrial Classification (SIC) Code for fluorescent lamp ballast manufacturers is 36124. To be categorized as a ''small'' fluorescent lamp ballast manufacturer, a firm must employ no more than 750 employees.

In the fluorescent lamp ballast industry, there is one ''small'' manufacturer who produces both ''affected'' magnetic and electronic ballasts. The ''small'' manufacturer has its electronic and magnetic ballast manufacturing operations in the same plant. Its smaller size and less automated operations would seem to provide it with the flexibility to adapt to a new electronic ballast standard without significant asset write-offs or plant closures.

The negative impacts on the ''small'' manufacturer's cash flows from operations, however, would likely be similar in proportion to those of the larger manufacturers.

Since only one of the seven manufacturers of fluorescent lamp ballasts is ''small,'' the Department concludes that today's final rule would not affect a ''substantial'' number of ''small'' manufacturers. In addition, the firm's flexible manufacturing operations, along with the expected proportional financial impacts, strongly suggests that the energy-efficiency standards would not produce ''significant'' economic impacts on that one manufacturer. Furthermore, the small manufacturer is a signer of the Joint Comment.

In view of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the standard levels in today's final rule will not ''have a significant economic impact on a substantial number of small entities,'' and it is not necessary to prepare a regulatory flexibility analysis.

d. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

e. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

f. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

g. Review under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain

requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies also must have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy on March 14, 2000. (65 FR 13735). DOE has examined today's final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's final rule were preempted by the Federal standards established in the NAECA Amendments of 1988. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA.

h. Review Under the Unfunded Mandates Reform Act

With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). UMRA also requires each Federal agency to develop an effective process to permit timely input by state, local, and tribal governments on a proposed significant intergovernmental mandate. The Department's consultation process is described in a notice published in the **Federal Register** on March 18, 1997 (62 FR 12820). Today's final rule may impose expenditures of $100 million or more on the private sector. It does not contain a Federal intergovernmental mandate.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the Notice of Final Rulemaking and ''Regulatory Impact Analysis'' section of the TSD for this Final Rule responds to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), today's final rule establishes energy conservation standards for fluorescent lamp ballasts that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's final rule.

i. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

j. Review Under the Plain Language Directives

Section 1(b)(12) of Executive Order 12866 requires that each agency draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use plain language in all proposed and final rulemaking documents published in the **Federal Register**.

Today's rule uses the following general techniques to abide by Section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998:

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

k. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. DOE also will submit the supporting analyses to the Comptroller General (GAO) and make them available to each House of Congress. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on August 22, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

Part 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.32 of subpart C is amended by revising paragraph (m) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(m) *Fluorescent lamp ballasts.*

(1) Except as provided in paragraphs (m)(2), (m)(3), and (m)(4) of this section, each fluorescent lamp ballast—

(i) (A) Manufactured on or after January 1, 1990;

(B) Sold by the manufacturer on or after April 1, 1990; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with an F40T12, F96T12, or F96T12HO lamps shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	1.805
	277	40	1.805
Two F40 T12 lamps	120	80	1.060
	277	80	1.050
Two F96T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

(2) The standards described in paragraph (m)(1) of this section do not apply to—

(i) A ballast that is designed for dimming or for use in ambient temperatures of 0 °F or less, or

(ii) A ballast that has a power factor of less than 0.90 and is designed for use only in residential building applications.

(3) Except as provided in paragraph (m)(4) of this section, each fluorescent lamp ballast—

(i) (A) Manufactured on or after April 1, 2005;

(B) Sold by the manufacturer on or after July 1, 2005; or

(C) Incorporated into a luminaire by a luminaire manufacturer on or after April 1, 2006; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with an F40T12, F96T12, or F96T12HO lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application of operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	2.29
	277	40	2.29
Two F40 T12 lamps	120	80	1.17
	277	80	1.17
Two F96T12 lamps	120	150	0.63
	277	150	0.63
Two F96T12HO lamps	120	220	0.39
	277	220	0.39

(4) (i) The standards described in paragraph (m)(3) do not apply to:

(A) A ballast that is designed for dimming to 50 percent or less of its maximum output;

(B) A ballast that is designed for use with two F96T12HO lamps at ambient temperatures of −20 °F or less and for use in an outdoor sign;

(C) A ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential building applications; or

(D) A replacement ballast as defined in paragraph (m)(4)(ii) of this section.

(ii) For purposes of this paragraph (m), a replacement ballast is defined as a ballast that:

(A) Is manufactured on or before June 30, 2010;

(B) Is designed for use to replace an existing ballast in a previously installed luminaire;

(C) Is marked ''FOR REPLACEMENT USE ONLY'';

(D) Is shipped by the manufacturer in packages containing not more than 10 ballasts;

(E) Has output leads that when fully extended are a total length that is less than the length of the lamp with which it is intended to be operated; and

(F) Meets or exceeds the ballast efficacy factor in the following table:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40 T12 lamp	120	40	1.805
	277	40	1.805
Two F40 T12 lamps	120	80	1.060
	277	80	1.050
Two F96T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

* * * * *

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

DEPARTMENT OF JUSTICE

Antitrust Division

Main Justice Building, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530–0001, (202) 514–2401/(202) 616–2645

Mary Anne Sullivan,
General Counsel, Department of Energy, Washington, DC 20585.

Dear Ms. Sullivan:

I am responding to your March 28, 2000 letter seeking the views of the Attorney General about the potential impact on competition of the proposed energy efficiency standards for fluorescent lamp ballasts. Your request was submitted pursuant to Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act, 42 U.S.C. §§ 6291, 6295, which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy efficiency standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

We have reviewed the proposed standards and the supplementary information published in the **Federal Register** notice and submitted to the Attorney General, which includes information provided to the Department of Energy by ballast manufacturers, their suppliers, and their customers. The proposed standards could not be met by most types of magnetic fluorescent lamp ballasts and would likely result in the increased use of electronic ballasts. Our conclusion is that the proposed standards would not adversely affect competition in the ballast market.

In reaching this conclusion we note that production of electronic ballasts has already grown to more than 60 percent of industry sales, and that each of the seven manufacturers that together account for more than 95 percent of the domestic ballast market already produces electronic ballasts. The ballast manufacturers have said the proposed standards would not force any of them to exit the ballast business.

Further, the proposed standards would be phased in—five years for new ballasts and ten years for replacement ballasts—and include a number of exemptions, such as an exemption for residential applications. Finally, there is no indication in the record that the proposed standards would limit electronic ballast production by any firms and therefore would not likely reduce competition in the production of electronic ballasts. We therefore conclude that the proposed standards will not likely reduce competition in the sale of ballasts.

Sincerely,

Joel I. Klein.

[FR Doc. 00–24004 Filed 9–18–00; 8:45 am]
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Federal Register

Tuesday,

September 19, 2000

Part VI

Federal Communications Commission

47 CFR Part 20

Implementation of 911 Act; the Use of N11 Codes and Other Abbreviated Dialing Arrangements; Compatibility With 911 Emergency Calling Systems; Proposed Rule

Compatibility With 911 Emergency Calling Systems; Compatibility With Enhanced 911 Emergency Calling Systems; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 92–105; FCC 00–327]

Implementation of 911 Act; the Use of N11 Codes and Other Abbreviated Dialing Arrangements; Compatibility with 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document the Commission seeks comment on the appropriate means for providing reasonable transition periods to allow wireline and wireless carriers the necessary time to convert to the use of 911 as the universal emergency assistance number throughout the United States. The establishment of transition periods will serve the public interest by providing wireline and wireless carriers the necessary time to implement the modifications to their networks to achieve universal usage of 911.

DATES: Comments are due on or before October 16, 2000, and reply comments are due on or before November 15, 2000. Public comment on the information collections are due November 20, 2000, and comments by the Office of Management and Budget (OMB) are due January 17, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to

Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to

Ed Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Callahan, Network Services Division, Common Carrier Bureau at 202–418–2320; David Siehl, Policy Division, Wireless Telecommunications Bureau at 202–418–1310. For further information concerning the information collection contained in this Third Notice of Proposed Rulemaking, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third NPRM of Proposed Rulemaking (Third NPRM) in CC Docket No. 92–105; FCC 00–327, adopted August 24, 2000, and released August 29, 2000. The complete text of this Third NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Third NPRM of Proposed Rulemaking

1. This Third NPRM of Proposed Rulemaking (Third NPRM) is a Notice of Proposed Rulemaking on transition periods for areas in which 911 is not in use as an emergency telephone number. The Commission seeks comment on how to provide for transition periods.

2. The Wireless Communications and Public Safety Act of 1999 (911 Act) provides that the Commission shall designate 911 as the universal emergency telephone number within the United States for both wireline and wireless telephone service. It further directs the Commission, in designating 911, to ''provide appropriate transition periods for areas in which 911 is not in use as an emergency telephone number.''

3. The deployment of 911 emergency service as it is generally known in this country has two primary components. First, all telecommunications carriers' equipment (including switching and signaling equipment) must recognize the abbreviated dialing code ''911'' and direct such calls along with certain other necessary signaling and location information to the pre-designated or specified location where personnel are available to receive reports of emergencies. Second, equipment and personnel must exist to receive 911 calls. Generally, such equipment and personnel are located in Public Safety Answering Points (PSAPs), which are established and maintained by State and local authorities.

4. The Commission recognizes that communities throughout the United States are at differing points relative to implementation of 911. Many State and local authorities already have implemented access via 911 to PSAPs that can dispatch the appropriate emergency personnel for the particular emergency situation. On the opposite end of the spectrum, some communities may not use 911 or any other abbreviated dialing code, may not have PSAPs in place, and may provide access to police, fire, ambulance, and other emergency services by dialing a seven or ten-digit telephone number. Between these two ends of the spectrum, the Commission recognizes that a variety of conditions exist, including communities that use PSAPs but provide access to them via seven or ten-digit telephone numbers or abbreviated dialing code other than 911. In addition, there are communities that provide access to some emergency services via an abbreviated dialing code but have not established PSAPs. Implementation of the 911 abbreviated dialing code should recognize the varying conditions that exist in communities throughout this country.

5. The transition to the nationwide use of 911 as the emergency service number will involve the coordinated efforts of the States and localities, PSAPs, telecommunications service providers, and other entities. The 911 Act provides for reasonable transition periods for those areas where 911 is not currently the emergency number. A transition period will provide wireline and wireless carriers the necessary time to implement the technical modifications to their networks. In addition, such a period will permit translation of 911 at the appropriate network points into the emergency number in use by the PSAPs in a particular jurisdiction. The legislative history accompanying the 911 Act also indicates an intent that these transition periods should be determined by service area-specific circumstances and capabilities.

6. The Commission seeks comment on the technical and operational issues that should be taken into account in adopting transition periods that will allow carriers sufficient time to transition to the use of 911 as an emergency telephone number. For example, carriers' transition to the 911 emergency number may require, among other things, development and operation of database systems, certain network modifications to current emergency dialing patterns, and hardware or software purchases and upgrades. The Commission seeks comment on all of the steps that carriers must undertake to transition to the use of 911 and suggested timeframes that will allow carriers to complete those steps as expeditiously as possible. In addition, the Commission seeks comment on the particular technical and operational issues presented by a requirement that the carriers offer 911 service to their subscribers, regardless of whether a PSAP is in place to receive 911 calls.

7. The Commission also seeks comment on whether certain telecommunications service providers will need more time to transition to the use of 911 than other service providers. For example, the Commission seeks comment on whether wireless carriers would require a longer transition period and if so, the unique circumstances applicable to wireless carriers that justify a longer transition period. The Commission seeks specific input on what factors will affect the transition periods required by different categories of carriers and what timeframes would be necessary to accommodate such factors. Further, the Commission seeks comment on any other factors that may affect the timeframe in which a carrier will be able to transition to the use of 911 in areas currently using another emergency telephone number. The Commission also seeks comment on measures it may take to encourage cooperative efforts by all affected parties during the transition to universal 911 usage.

8. Furthermore, where a locality has no PSAP or centralized emergency service program, the Commission seeks comment on the scope of carriers' obligation to direct 911 calls to a local fire, police, or other emergency service provider in such areas. The Commission recognizes that in this type of situation various logistical difficulties are presented and observe that PSAPs were established precisely to deal with the problem of ensuring the proper routing of 911 calls. Because of the logistical difficulties the Commission believes carriers would face, it tentatively concludes that it should not impose any particular obligation on carriers to transmit 911 calls to a particular local agency or similar destination in areas where State or local authorities have not established a PSAP or other answering point to which such calls can be routed. The Commission seeks comment on this tentative conclusion and any matter related to it that is relevant in establishing appropriate transition periods.

9. To enable the Commission to evaluate the progress made during the transition periods, the Third NPRM tentatively concludes that it would be useful and appropriate to monitor the progress of carriers in transitioning to the universal usage of 911 as the emergency telephone number. To assist the Commission in its monitoring effort, comment is sought on whether it should require carriers to file transition reports and, if so, the nature, extent, and timing of the information to be provided.

Administrative Matters

Ex Parte Presentations

10. The Third NPRM in CC Docket No. 92–105 is a permit-but-disclose notice and comment rulemaking proceeding. Members of the public, therefore, are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules.

Comment Filing Dates and Procedures

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments in response to the Third Notice of Proposed Rulemaking in CC Docket No. 92–105 on or before October 16, 2000, and reply comments on or before November 15, 2000. Comments and reply comments should be filed in combined CC Docket No. 92–105 and WT Docket No. 00–110 and should include a separate heading to identify the comments for each Docket Number. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW., Washington, DC 20554, with copies to David Siehl, Policy Division, Wireless Telecommunications Bureau, and to Cheryl Callahan, Network Services Division, Common Carrier Bureau, at 445 Twelfth Street, SW., Washington, DC 20554.

12. Comments also may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-mail/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties also may submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your E-Mail address>.'' A sample form and directions will be sent in reply.

13. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20037, (202) 857–3800.

Paperwork Reduction Act of 1995 Analysis

14. The actions contained in this Third NPRM have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

Initial Regulatory Flexibility Act Analysis—Third NPRM

15. This Initial Regulatory Flexibility Analysis (IRFA) in this Third NPRM is limited to matters addressed in the Third NPRM. This IRFA conforms to the RFA. (*See* 5 U.S.C. 604.)

16. This is a summary of the full IRFA. The full IRFA may be found in Appendix A of the full text of this Third NPRM.

I. Need for, and Objectives of, the Third NPRM

17. As required by the Regulatory Flexibility Act (RFA) (*See* 5 U.S.C. 604. The RFA, *see* 5 U.S.C. 601 *et seq.*, was amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) an Initial Regulatory Flexibility Analysis (IRFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Third NPRM, CC Docket No. 92–105. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Third NPRM as provided in paragraph 35 of the full text of the Third NPRM. The Commission will send a copy of the Third NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small

Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

18. The Third NPRM is an important step toward implementation of the Wireless Communications and Public Safety Act of 1999 (911 Act). Section 3(e) of the 911 Act directs the Commission to provide appropriate transition periods for areas in which 911 is not in use as an emergency telephone number on the date of enactment of the 911 Act. The Third NPRM seeks comment on the technical and operational issues that should be taken into account in adopting transition periods that will allow carriers sufficient time to transition to the use of 911 as an emergency telephone number. Thus, the Commission intends for the Third NPRM to stimulate participation by interested parties in our effort to provide for reasonable transition periods.

B. Legal Basis for Proposed Rules

19. The proposed action is authorized under sections 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), 310.

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

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

21. The definition of ''small governmental entity'' is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as States, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

22. *Common Carrier Services and Related Entities.* According to data in the most recent *Trends in Telephone Service* report, issued by the Commission, there are 4,144 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

23. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.

24. We have included small incumbent LECs in this present IRFA analysis. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LEC's in this IRFA analysis, although the Commission emphasizes that this RFA action has no effect on FCC analyses and determinations in other non-RFA contexts.

25. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not ''independently owned and operated.'' It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the actions proposed in this Third NPRM.

26. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the actions proposed in this Third NPRM.

27. *Local Exchange Carriers, Competitive Access Providers, Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange service, competitive access providers, or competitive local exchange carriers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent telecommunications industry revenue data, 1,348 carriers reported that they were engaged in the provision of incumbent local exchange services, and 212 carriers reported that they were providing competitive access or competitive local exchange services. The Commission does not have data

specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of providers and carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,560 providers of local exchange service, or of competitive access or competitive local exchange services are small entities or small entities that may be affected by the actions proposed in this Third NPRM.

28. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 171 small entity IXCs that may be affected by the actions proposed in this Third NPRM.

29. *A-Block LMDS Providers.* The total number of A-block LMDS licenses is limited to 493, one for each Basic Trading Area. The Commission has held auctions for all 493 licenses, in which it defined ''very small business'' (average gross revenues for the three preceding years of not more than $15 million), ''small business'' (more than $15 million but not more than $40 million), and ''entrepreneur'' (more than $40 but not more than $75 million) bidders. There have been 99 winning bidders that qualified in these categories in these auctions all of which may be affected by the actions proposed in this Third NPRM.

30. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's definition.

31. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. The Commission has adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. The Commission has held two auctions for Phase II licenses for the 220 MHz band. Fifty-three (53) winning bidders qualified as small or very small entities.

32. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Carrier Locator Interstate Service Providers* data, 303 carriers reported that they were engaged in the provision of paging and messaging. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 303 small paging carriers that may be affected by the rules. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

33. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent *Carrier Locator Interstate Service Providers* data shows that 142 carriers reported that they were engaged in the provision of SMR dispatching and ''other mobile'' services. Consequently, the Commission estimates that there are fewer than 142 small mobile service carriers that may be affected by the proposed rules.

34. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.

Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

35. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

36. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems. The Commission uses the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition.

37. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, the Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

38. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. In the context of both 800 MHz and 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; and the Commission has also received approval concerning 800 MHz SMR.

39. The proposed rules in the Third NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that hold CMRS licenses. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service as CMRS operators, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes of this IRFA, that all of the remaining existing SMR authorizations are held by small entities, as that term is defined by the SBA. For geographic area licensees in the 900 MHz SMR band there are 60 who qualified as small entities.

40. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the States bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

41. The Third NPRM invites comment on a number of issues pertaining to the implementation of 911 as the universal emergency number in the United States, and the transition to 911 by carriers that provide emergency communication services but are not currently using 911. A certain amount of regulation or compliance requirements may be inherent in ensuring the smooth, efficient transition to 911. For example, telecommunications carriers' equipment must recognize the dialing code 911, and direct such calls along with certain other signaling and location information to the pre-designated location where personnel are available to receive reports of emergencies. A carriers' transition to the 911 emergency number may require development and operation of database systems, certain network modifications to current emergency dialing patterns, and upgrades in software and hardware. The Third NPRM seeks comment on all of the steps that carriers must undertake for that transition and suggested timeframes to complete those steps expeditiously. Further, the Commission conceivably could adopt a mechanism for monitoring the progress of this transition. One possibility is a requirement that carriers file transition reports with the Commission.

42. The Commission is hopeful that the Third NPRM will attract clearly developed comments that will suggest suitable means for achieving ubiquitous, efficient transition to 911 with as little regulatory burden on all parties as possible. In this effort, the Commission, in cooperation with all interested parties, seeks a reliable, efficient way to improve critical 911 service in light of the varying current conditions in communities throughout the country. The expeditious transition to universal 911 usage is an important step in reaching this goal.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

44. The purpose of the 911 Act is to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for emergency communications, including wireless communications. Congress found that the establishment of a network that provided for the rapid, efficient deployment of emergency services would result in many public benefits, including faster delivery of emergency care with reduced fatalities and severity of injuries, and improved service in rural areas. Because of the critical life and death nature of the issues at stake in implementing 911 as a national emergency number, it is important that all parties involved, large or small, participate in the creation of this emergency infrastructure. Therefore, it is imperative that all entities participate in this rulemaking proceeding in order that the opinions

about and the effect of the proposed rules on all entities be reflected in the comments filed herein. Thus, the Commission is limited in affording exceptions or providing benefits to small entities. Wherever possible, the Commission has afforded maximum flexibility and minimum burden on all affected parties. For example, in paragraphs 17–21 of the full text of the decision, the Commission makes it clear that it is aware that localities across the nation are currently at different stages of transitioning to 911, and that service-area specific circumstances and capabilities will serve to determine what the transition periods should be. In recognition of such diverse conditions, the Third NPRM further seeks specific input on what factors will affect the transition periods required by different categories of carriers and what timeframes would be necessary to accommodate such factors. In addition, where a locality has no PSAP or centralized emergency service program, because of the various logistical difficulties present in such a situation, the Commission tentatively conclude that it should not impose any particular obligation on carriers to transmit 911 calls in such localities or areas. The Third NPRM seeks comment on this tentative conclusion.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

45. None.

Paperwork Reduction Act

46. The Third NPRM portion of this decision contains proposed a new paperwork collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Third NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due November 20, 2000. OMB comments are due January 17, 2001. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Transition to 911 Emergency Service: Third Notice of Proposed Rulemaking.

Form No.: None.

Type of Review: New information collection.

Respondents: Business or other for profit and non-profit.

Number of Respondents: 200,000.

Estimated Time Per Response: 10 hours.

Total Annual Cost Burden: 0.

Total Annual Burden: 4,582,470 hours.

Needs and Uses: The proposed meetings, if adopted, would be used to encourage cooperation and to provide affected parties with an opportunity to interact with each, thus smoothing the path for a cohesive, responsive, dependable 911 emergency communications system. The proposed report, if adopted, would be used by the Commission to track the progress being made towards transferring to 911 and to judge how much support and encouragement the Commission might provide to the various affected parties.

Ordering Clauses

47. Pursuant to sections 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310, the Third NPRM in CC Docket No. 92–105 is hereby adopted.

48. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Third NPRM including this IRFA, to the Chief Counsel for Advocacy of the Small Business Association.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–24111 Filed 9–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 00–110; FCC 00–327]

Compatibility with 911 Emergency Calling Systems; Compatibility with Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document the Commission seeks comment on how it should encourage and support deployment of comprehensive end-to-end emergency communications infrastructure and programs. The Commission has a statutory mandate to undertake such an effort in encouraging and supporting the States in their plans to achieve such deployment. Obtaining comment on the best course for the Commission to carry out its mandate will serve to achieve a coordinated, nationwide emergency communications network that integrates the latest technologies with improved emergency service to the public. In fulfilling its obligation, the Commission is not authorized to impose obligations or costs on any person.

DATES: Comments are due on or before October 16, 2000, and reply comments are due November 15, 2000. Public comment on the information collections are due October 19, 2000, and comments by the Office of Management and Budget are due January 17, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Siehl, 202–418–1310. For further information concerning the information collection contained in this Notice of Proposed Rulemaking, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Proposed Rulemaking portion (NPRM) in WT Docket No. 00–110; FCC 00–327, adopted August 24, 2000, and released August 29, 2000. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services

(ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Notice of Proposed Rulemaking

1. The Wireless Communications and Public Safety of 1999 (911 Act) seeks to achieve a coordinated, nationwide emergency communications network that integrates the latest technologies and ensures improved and prompt delivery of emergency services. To facilitate this goal, section 3(b) of the 911 Act directs the Commission to ''encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service.'' The Commission is directed to ''encourage each State to develop and implement coordinated statewide deployment plans, through an entity designated by the governor, and to include representatives'' of various relevant organizations and other stakeholders in the development and implementation of such plans. Although the 911 Act requires the Commission to ''consult and cooperate with State and local officials'' in its role of encouraging and supporting such deployment, the Commission is not authorized to ''impose obligations or costs on any person.''

2. In this Notice of Proposed Rulemaking (NPRM), as a general matter, the Commission seeks comment on what measures it should undertake to encourage and support efforts by the States to deploy comprehensive emergency communications networks based on each State's coordinated plan. At the outset of this discussion, the Commission finds that section 3(b) reflects a careful balance between the need for Federal and State leadership and the responsibilities of local jurisdictions and others to provide 911 emergency services. Congress recognized that most of the key decisions in this area are not made by the Federal government, but by the private sector and State and local governments, and that implementation of 911 systems is carried out at the local level. The Commission finds, therefore, that the framework for implementation of the state plans and statewide emergency systems envisioned by the 911 Act should rely on the cooperation and coordination of all the interested parties. The Commission tentatively concludes that, under section 3(b), it may adopt provisions that facilitate the States' efforts through guidelines, fact sheets, meetings, or other information-sharing measures that do not impose obligations or costs or otherwise interfere with the careful balance of responsibilities. The Commission seeks comment on its tentative conclusion.

3. Initially, the Commission could satisfy its obligation to consult and cooperate with the listed parties in the development of state plans by convening a forum or other meetings to develop and disseminate information on 911 issues. The Commission believes that a record developed in such meetings might be useful in providing consultation and cooperation among the interested parties. As an initial matter, these meetings could be useful to discuss our current 911 rules. Further, such an approach also could entail coordination among designated entities from different States that share problems particular to their region and perhaps from specific rural or urban areas that overlap state boundaries. The Commission could invite, for example, attendance by representatives of the groups listed in the 911 Act, as well as other interested organizations or representatives. The Commission seeks comment on these tentative suggestions and any other approaches, such as a ''Round Table'' meeting on technical matters, which would provide effective means for consulting about or monitoring state plans. To enable the Commission to monitor technical developments that may assist the States in their efforts, the Commission also seeks comment on whether carriers are the best source of information on the status of deployment of statewide 911 services, and how such information might be gathered and shared.

4. In addition, the Commission could perform the function of a ''clearinghouse,'' both with regard to reporting information gathered at the meetings or elsewhere and indicating problems encountered in implementation of 911 infrastructures and programs, including the progress of the States in developing end-to-end systems and establishing their state plans, as well as the entities designated to develop statewide systems. In such a capacity, the Commission might gather information on the status of implementation of 911 across the country, and thus serve as a resource for entities designated by the governors, perhaps in conjunction with representative associations. Information about emerging technologies, including Automatic Crash Notification and other advance safety systems, could in this way be shared among the States and incorporated in the statewide plans. In addition, it may be useful to use the Commission's current E911 web site to make available 911 technical and implementation information, including information about other sources that may assist States and localities in developing their plans. (http://www.fcc.gov//e911.) The Commission seeks comment on these proposals, including what information should be put on the Commission's E911 web site that would assist interested parties.

5. The Commission also seeks comment on what other forms of information the Commission could assist in providing that would be useful. For example, a ''model'' state plan could be developed. The Commission seeks comment on the process by which a ''model'' state plan could be developed in a manner that does not impose costs or obligations on any person. Finally, as a general matter, the Commission requests comment on what additional steps the States view as necessary to their development of state plans and on what kinds of support the States need from the Commission in order to achieve the statutory objectives of section 3(b).

Administrative Matters

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments in response to the NPRM on or before October 16, 2000, and reply comments on or before November 15, 2000. Comments and reply comments should be filed in combined CC Docket No. 92–105 and WT Docket No. 00–110 and should include a separate heading to identify the comments for each Docket Number. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW., Washington, DC 20554, with copies to David Siehl, Policy Division, Wireless Telecommunications Bureau, and Cheryl Callahan, Network Services Division, Common Carrier Bureau, at 445 Twelfth Street, SW., Washington, DC 20554. Comments also may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the

Internet to *http://www.fcc.gov/e-mail/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties also may submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your E-Mail address>.'' A sample form and directions will be sent in reply. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

Ex Parte Presentations

7. This NPRM is a permit-but-disclose notice and comment rulemaking proceeding. Members of the public, therefore, are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules.

Paperwork Reduction Act of 1995 Analysis

8. The actions proposed in this NPRM have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

Initial Regulatory Flexibility Act Analysis—NPRM

9. The Initial Regulatory Flexibility Analysis (IRFA) in this NPRM is limited to matters addressed in the NPRM. This is a summary of the IRFA. The full IRFA may be found in Appendix B of the full text of this decision.

10. As required by the Regulatory Flexibility Act (RFA) (*See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C 601 *et seq*. has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission has prepared this present IRFA of the possible significant economic impact on small entities by the policies and rules proposed in this decision. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy or the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

11. The NPRM initiates a proceeding to address issues that are involved in implementing the (911 Act). The 911 Act seeks to achieve a coordinated, nationwide emergency communications network that integrates the latest technologies and ensures improved and prompt delivery of emergency services. Section 3(b) of the 911 Act directs the Commission to encourage and support efforts by the States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans. The NPRM seeks comment on what measures the Commission should adopt to encourage and support those state efforts. The NPRM also seeks comment on how the Commission should satisfy its obligation to consult and cooperate with various stakeholders in the development of state plans. The Commission recognizes that it must balance its mandate of encouraging and supporting parties in their efforts with its Congressional directive not to impose obligations or costs on any person. The NPRM is intended to ensure that the Congressional goals for an expanded and improved nationwide emergency communications system are implemented expeditiously, effectively, and efficiently, thus saving and improving lives.

B. Legal Basis for Proposed Rules

12. The proposed action is authorized under sections 1, 4(i), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), 310; and 47 U.S.C.A. 615.

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

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

14. The definition of ''small governmental entity'' is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as States, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

15. *Common Carrier Services and Related Entities.* According to data in the most recent *Trends in Telephone Service* report, issued by the Commission, there are 4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

16. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.

17. We have included small incumbent LECs in this present IRFA analysis. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.

The Commission has therefore included small incumbent LEC's in this IRFA analysis, although the Commission emphasizes that this RFA action has no effect on FCC analyses and determinations in other non-RFA contexts.

18. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not ''independently owned and operated.'' It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the actions proposed in this NPRM.

19. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the actions proposed in this NPRM.

18. *Local Exchange Carriers, Competitive Access Providers, Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange service, competitive access providers, or competitive local exchange carriers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent telecommunications industry revenue data, 1,348 carriers reported that they were engaged in the provision of incumbent local exchange services, and 212 carriers reported that they were providing competitive access or competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of providers and carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,560 providers of local exchange service, or of competitive access or competitive local exchange services are small entities or small entities that may be affected by the actions proposed in this NPRM.

19. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 171 small entity IXCs that may be affected by the actions proposed in this NPRM.

20. *A-Block LMDS Providers.* The total number of A-block LMDS licenses is limited to 493, one for each Basic Trading Area. The Commission has held auctions for all 493 licenses, in which it defined ''very small business'' (average gross revenues for the three preceding years of not more than $15 million), ''small business'' (more than $15 million but not more than $40 million), and ''entrepreneur'' (more than $40 but not more than $75 million) bidders. There have been 99 winning bidders that qualified in these categories in these auctions all of which may be affected by the actions proposed in this NPRM.

21. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's definition.

22. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. The Commission has adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. The Commission has held two auctions for Phase II licenses for the 220 MHz band. Fifty-three (53) winning bidders qualified as small or very small entities.

23. *Private and Common Carrier Paging.* The Commission has proposed

a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Carrier Locator Interstate Service Providers* data, 303 carriers reported that they were engaged in the provision of paging and messaging. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 303 small paging carriers that may be affected by the rules. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

24. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent *Carrier Locator Interstate Service Providers* data shows that 142 carriers reported that they were engaged in the provision of SMR dispatching and ''other mobile'' services. Consequently, the Commission estimates that there are fewer than 142 small mobile service carriers that may be affected by the proposed rules.

25. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

26. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

27. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems. The Commission uses the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition.

28. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, the Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

29. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. In the context of both 800 MHz and 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; and the Commission has also received approval concerning 800 MHz SMR.

30. The proposed rules in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that hold CMRS licenses. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service as CMRS operators, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes of this IRFA, that all of the remaining existing SMR authorizations are held by small entities, as that term is defined by the SBA. For geographic area licensees in the 900 MHz SMR band there are 60 who qualified as small entities.

31. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the States bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. The NPRM seeks comment on what measures may be necessary to implement the provisions of section 3(b) of the 911 Act, and on the Commission's

tentative conclusion that it may adopt measures that facilitate the efforts of the States in their deployment of comprehensive emergency communications networks. Actual reporting, recordkeeping, and compliance requirements will depend on what the Commission ultimately adopts. Based on the proposals contained in the NPRM, the Commission finds several possible compliance requirements. First, the 911 Act mandates that each State ''develop and implement coordinated statewide deployment plans. * * *'' It may thus be necessary for various involved parties, including the carriers and the PSAPs, to communicate regularly both orally and in person. The Commission might assist in these cooperative efforts by scheduling round table discussions or acting as a clearinghouse for information. The parties may be asked to participate by providing, for example, available information on the status of the implementation of 911 infrastructures and programs, and by contributing to a process in which the Commission could assist in providing information, possibly for the development of a ''model'' state plan. Also, to ensure compliance with the statutory objectives of section 3(b), the Commission could conceivably request that these plans be submitted to the Commission for review. These issues are discussed in paragraphs 24–27 of the NPRM.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. Because of the critical life and death nature of the issues at stake in implementing 911 as a national emergency number, it is important that all parties involved, large or small, participate equally in the 911 program. The NPRM takes note, however, of Congressional recognition that most of the key decisions in improving 911 service are not made by the Federal government but by the private sector and State and local governments, and implementation of 911 systems is carried out at the local level. Therefore, instead of proposing that the Commission play a strong regulatory role in 911 implementation, the NPRM seeks comment on different measures that could possibly be taken as part of a framework for deployment of comprehensive emergency systems based on statewide plans and that are based on the cooperation and coordination of all the interested parties, with the encouragement and support of the Commission.

35. Rather than proposing that the various parties coordinate among themselves and report back to the Commission with the result of their efforts, the NPRM, as indicated in paragraph 25, seeks comment on whether the Commission could satisfy its obligation to consult and cooperate by convening a forum or other meetings to develop and disseminate information on 911 issues. The Commission believes that this could help the coordination process by bringing together the designated entities from different States that share problems particular to their region and perhaps from specific rural or urban areas that overlap state boundaries. Also, paragraph 26 sets forth, the Commission proposes that it could perform a ''clearinghouse'' function, providing a common point for locating necessary information and indicating the problems encountered and the progress made. Finally, as a general matter, the NPRM solicits comment on steps the States view as necessary to their development of state plans and what kinds of support they need from the Commission in order to achieve the statutory objectives of section 3(b).

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

Ordering Clauses

37. Pursuant to sections 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310; and U.S.C.A 615, the Notice of Proposed Rulemaking in WT Docket No. 00–110 is adopted.

38. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the associated Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Association.

Paperwork Reduction Act

39. This NPRM contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due November 20, 2000. OMB comments are due January 17, 2001. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: N.A.

Title: Enhanced 911 Emergency Calling Systems, NPRM.

Form No. N.A.

Type of Review: New information collection.

Respondents: Business or other for profit, non-profit.

Number of Respondents: 200,000.

Estimated Time Per Response: 11 hours.

Total Annual Burden: 10,982,470 hours.

Cost to Respondents: 0.

Needs and Uses: The proposed burdens contained in this NPRM would be used by the Commission to satisfy its legislative mandate to consult and cooperate with the affected parties, and to offer encouragement and support to the parties in their efforts to achieve a cohesive transmission to full 911 emergency communications service.

Ordering Clauses

40. Pursuant to sections 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310, the NPRM in WT Docket No. 00–110 is hereby adopted.

41. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Association.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–24112 Filed 9–18–00; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Tuesday,
September 19, 2000

Part VII

The President

Proclamation 7341—National Farm Safety and Health Week, 2000

Proclamation 7342—Ovarian Cancer Awareness Week, 2000

Proclamation 7343—Citizenship Day and Constitution Week, 2000

Federal Register
Vol. 65, No. 182
Tuesday, September 19, 2000

Presidential Documents

Title 3—

The President

Proclamation 7341 of September 15, 2000

National Farm Safety and Health Week, 2000

By the President of the United States of America

A Proclamation

Throughout history, America's farmers and ranchers have worked our land with skill, energy, and determination. They have endured floods and droughts, survived bitter winters and scorching summers, seen crops devastated by insects and livestock lost to disease. Through hard times and good times alike they have labored, making American agriculture the most efficient and productive source of food and fiber in the world.

Beyond the natural and economic challenges our Nation's agricultural workers face each year are the daily physical hazards associated with their profession, including handling livestock, using chemicals, and operating powerful machinery. To reduce the level of preventable workplace accidents that have taken such a toll on our country's agricultural communities, engineers and manufacturers have worked diligently to make farm equipment safer. Today, tractors and other farm machinery come with standard safety features such as rollover protection, bypass starting systems, and tamperproof guarding and shielding.

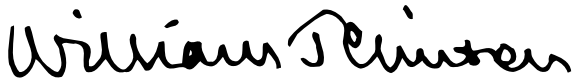
However, designing safer farm machinery is only part of the solution. We must also ensure that agricultural workers are aware of the benefits of new safety features and that they strive to use and maintain them. Safety and health organizations are accomplishing this vital task by offering hands-on, interactive training programs in farming and ranching communities across the country. Through safety day camps and farm safety programs targeted specifically for children and adolescents growing up on farms and ranches, they are helping to protect the well-being of the most vulnerable members of our agricultural communities.

My Administration is also working hard to improve the health and safety of rural Americans. For example, we created the E-rate program, which, among other things, secures low-cost Internet connections for rural health clinics and hospitals. We have also urged the Congress to fund a meaningful Medicare prescription drug benefit that would provide affordable, dependable coverage to all beneficiaries, including more than 9 million Medicare beneficiaries in rural communities across the Nation. Compared to their urban counterparts, rural beneficiaries have lower incomes and more limited access to pharmacies, and are less likely to have any prescription drug coverage. Rural beneficiaries generally pay more for prescription drugs than urban beneficiaries and are more likely to go without needed medication because of its expense. Meaningful drug coverage for Medicare beneficiaries would help improve the health and quality of life of millions of older members of our Nation's farming and ranching communities.

All Americans owe a debt of gratitude to our country's farmers and ranchers, whose hard work puts food on our tables and helps ensure our Nation's leadership of the global economy. We can best acknowledge that debt by recognizing the importance of continually improving the health and safety of America's agricultural workers, not only during this special observance, but also throughout the year.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 17 through September 23, 2000, as National Farm Safety and Health Week. I call upon government agencies, organizations, and businesses that serve our agricultural sector to strengthen their efforts to promote safety and health programs among our Nation's farm and ranch workers. I ask agricultural workers to take advantage of the diverse educational and training programs and technical advancements that can help them avoid injury and illness. I also call upon our Nation to recognize Wednesday, September 20, 2000, as a day to focus on the risks facing young people on farms and ranches. Finally, I call upon the citizens of our Nation to reflect on the bounty we enjoy thanks to the labor and dedication of agricultural workers across our land.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 00–24254
Filed 9–18–00; 11:18 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7342 of September 15, 2000

Ovarian Cancer Awareness Week, 2000

By the President of the United States of America

A Proclamation

Ovarian cancer is one of the deadliest cancers affecting American women today. This year alone, 14,000 women will die from ovarian cancer, and more than 23,000 will be diagnosed with the disease. While ovarian cancer is very treatable when detected early, currently 75 percent of new cases are not diagnosed until the disease is in its late stages of development, when treatment is less effective. With early detection, women have a survival rate of over 90 percent; diagnosis in its later stages, however, dramatically reduces the chances of survival to just 25 percent.

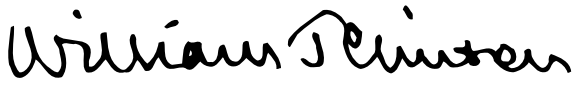
Unfortunately, there is still no reliable and quick screening test for ovarian cancer like the Pap smear for cervical cancer or the mammogram for breast cancer. In addition, its symptoms—such as abdominal discomfort or bloating, cramps, unaccountable weight gain or loss, abnormal bleeding—can often be mistaken for signs of less serious conditions. Consequently, raising awareness of risk factors for ovarian cancer is a crucial weapon in our effort to save lives. While every woman has the potential to develop ovarian cancer, the risk is higher for those who have never given birth; who are over the age of 50; or who have a family history of ovarian, breast, or colon cancer.

Research into the causes and treatment of ovarian cancer still offers us the best hope for progress in defeating this disease that has taken such a deadly toll on American families. The National Cancer Institute (NCI) is currently sponsoring a large-scale cancer screening trial to explore, among other issues, the usefulness of testing women's blood for abnormally high levels of CA-125, a substance known as a tumor marker, which is often discovered in higher than normal amounts in the blood of women with ovarian cancer. Researchers are also evaluating the effectiveness of ultrasound testing as a tool for early detection. To learn more about the genetic causes of ovarian cancer, the NCI's Cancer Genetics Network has established registries to track cancers within families to identify possible inherited risks.

As with every disease, knowledge is crucial to overcoming ovarian cancer. Ovarian Cancer Awareness Week offers us an invaluable opportunity to educate Americans about the symptoms and risk factors of the disease, to alert health care providers about the need for vigilance in recognizing those symptoms and risks early, and to promote increased funding for research into more effective methods of diagnosis and treatment. The more we know about ovarian cancer, the more women and their families can live out their lives free from the shadow of this devastating disease.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 17 through September 23, 2000, as Ovarian Cancer Awareness Week. I encourage the American people to observe this week with appropriate ceremonies and activities that raise awareness of the need for early diagnosis and treatment of this deadly disease.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 00–24255
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Presidential Documents

Proclamation 7343 of September 17, 2000

Citizenship Day and Constitution Week, 2000

By the President of the United States of America

A Proclamation

In the spring of 1787, George Washington, Benjamin Franklin, Alexander Hamilton, James Madison, and other prominent leaders gathered once again in Philadelphia to offset a looming crisis in the life of our young democracy. The Articles of Confederation, a blueprint for government that they had hammered out in the Second Continental Congress in 1777, had proved too weak and ineffective to achieve a balance of power between the new Federal Government and the States. Rising to this fresh challenge, our founders crafted a new charter of government—the United States Constitution—that has proven to be a masterpiece of political philosophy.

Wise about human nature and wary of unlimited power, the authors of our Constitution created a government where power resides not with one person or institution but with three separate and equal branches of government. It guarantees for our citizens the right and responsibility to choose leaders through free elections, giving Americans the means to enact political change without resorting to violence, insurrection, or revolution. And, with its carefully crafted system of checks and balances, the Bill of Rights, and its process of amendment, the Constitution maintains an inspired balance between authority and freedom and between the ideals of unity and individual rights.

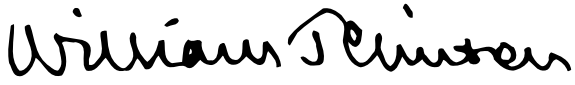
For more than 200 years the Constitution has provided our Nation with the resilience to survive trying times and the flexibility to correct past injustices. At every turning point in our history, the letter and spirit of the Constitution have enabled us to reaffirm our union and expand the meaning of liberty. Its success can be measured by the millions of people who have left their homelands over the past two centuries to become American citizens. Its influence can be measured by the number and vigor of new democracies springing up across the globe.

In giving us the Constitution, our founders also gave us a powerful example of citizenship. They were deeply involved in governing our Nation and passionately committed to improving our society. The rights we sometimes take for granted today were secured by their courage and by the blood of patriots during the Revolutionary War. As we observe Citizenship Day and Constitution Week, let us remember that with the many gifts bestowed on us by the Constitution comes the responsibility to be informed and engaged citizens; to take an active role in the civic life of our communities and our country; and to uphold the ideals of unity and liberty that have sustained us since our earliest days as a Nation.

In commemoration of the signing of the Constitution and in recognition of the importance of active, responsible citizenship in preserving the Constitution's blessings for our Nation, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as ''Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 17, 2000, as Citizenship Day and September 17 through September 23, 2000, as Constitution Week. I call upon Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations, to conduct meaningful ceremonies and programs in our schools, houses of worship, and other community centers to foster a greater understanding and appreciation of the Constitution and the rights and duties of citizenship. I also call on all citizens to rededicate themselves to the principles of the Constitution.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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. 3519/P.L. 106–264

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

Last List August 22, 2000

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